Disclosure of Adoption Information

Report of the Special Commissioner, Ralph Garber, D.S.W.

to the Honourable John Sweeney
Minister of Community and Social Services
Government of Ontario

November 1985

Ministry of
Community and
Social Services
Ontario

Ministère des
Services sociaux
et communautaires

DISCLOSURE OF ADOPTION INFORMATION

Report of the
Special Commissioner, Ralph Garber, D.S.W.
to the Honourable John Sweeney,
Minister of Community and Social Services
Government of Ontario

November 1985

ERRATA

PLEASE NOTE THE FOLLOWING CHANGES:

Chapter 5 p. 39 last paragraph 4th line	Delete the word "time".
Chapter 5 p. 40 sub-section b) 3rd line	Delete "(plasticized card)".
Chapter 5 p. 40 Substitute the 1st paragraph of sub-section c) (note that the changes have been underlined)	c) Adoptee's amended birth certificate: When an adoption order is granted, the Vital Statistics Act provides that the adoptee's original birth records retained by the Registrar General may be set aside and replaced by an ammended record to show the adoptive parents as if they were the birth parents. Since 1958, adoptive parents wishing to reregister have been required to complete and sign an amended "statement of live birth", substituting their names and other information for the name(s) etc. of the birth parent(s). Many adoptive parents have complained that this practice is tantamount to fraud.

.../2

ERRATA
DISCLOSURE OF
ADOPTION INFORMATION
Page 2....

Chapter 5
p. 40
Substitute the 3rd paragraph of sub-section c) (note that the changes have been underlined)

c) When an adopted person applies for a birth certificate, a short-form certificate in the amended (adopted) name is issued. The long form statement of live birth may be released in special circumstances but only in its amended form for those adoptees whose birth has been reregistered.

Chapter 7
p. 57
Substitute for the 3rd and 4th paragraphs (note that the changes have been underlined)

Native children have been placed for adoption at disproportionate rates compared with their numbers in the total population of the province.(14) The adoption data reported for 1983 suggest that some 2.8% of those adopted in Ontario that year were Native children. This compares with less than 2% of Native people in the general population of Ontario.(15) There is no doubt Native children are being placed for adoption at a greater rate than non-Native children.

Furthermore, in 1983, only 5.8% of the Native children adopted were placed with Native families. In that year, therefore, the Native groups lost almost 95% of their children placed for adoption. This figure coupled with the fact that from 1969 to 1979 an average of 78% of status Indian children placed for adoption were adopted by non-Native families indicates the future of Indian and Native communities in Ontario may be severe risk.(30)

ADDENDUM

PLEASE NOTE THE FOLLOWING NEW INFORMATION:

The adoption data reported for 1984 suggest that some 3.3% of those adopted in Ontario that year were Native children.

Of the Native children adopted during 1984, some 31% were placed with Native families.

January 1986

DISCLOSURE OF ADOPTION INFORMATION

The report of the Special Commissioner, Ralph Garber, D.S.W.,
Dean of the Faculty of Social Work, University of Toronto

to the Honourable John Sweeney,
Minister of Community and Social Services,
Government of Ontario

November 1985

Preface

It appears to be the custom to refer to reports by the name of the senior author, chairperson, or commissioner. The short-handed approach does not do any justice to the contributions of so many to the realization of the report. The report could not have been written without the patient and skillful editing of Sydney Woollcombe. Parent Finders, from the beginning, gave freely of their time and documents to acquaint me with aspects of disclosure and reunion. Their research, which was conducted with enthusiasm if not the polish of some scholarly efforts, nevertheless supported and proved to be reliable and comparable to studies done in other countries. Beverly Leaver studied the responses of all kinds received by the Ministry and Standing Committee on Social Development. She brought the individual voices into a chorus, which may not have been four-part harmony but did convey the main theme and counterpoint. Leslie Hardy reviewed legislation and judicial opinions from a large number of jurisdictions and assisted my understanding of how the law and legislators viewed disclosure. Pat O'Brien and Joan Webber of the Vountary Disclosure Register, Vicky Leatch, Joyce Cohen, and many others freely gave advice and information while carefully avoiding statements of position.

The staff of the Policy Division of the Ministry were available for consultation on questions of feasibility and assisted in finding information which I would otherwise not have had available. Dr. Alexina McWhinnie of the U.K. and, through her good offices, the British Council permitted me to examine in person how adoption disclosure functions in England and Scotland. The list of those who met with me is reflected in the interview notes appended to the bibliography. Directors and staff members of several societies received my requests for information and opinion and were very helpful in separating the significant from the exotic.

My secretary, Isabel Kelly, and the editor's secretary Frances Tanasychuk, typed draft after draft and maintained both equanimity and curiosity about the adoption process. Finally, my wife, Eileen, with common sense comments cut through my thinking out loud and obliged me to reconsider reality.

To all I am indebted, but hold only myself responsible for the report.

R. G.
Toronto, November 1985

TABLE OF CONTENTS

Page

1. Introduction and findings 1
2. Adoption and secrecy 11
3. Disclosure: an overview 25
4. Disclosure of non-identifying information 33
5. Disclosure of identifying information 39
6. Mandatory counselling and the role of the Adoption Disclosure Register 49
7. Special considerations re: Indian and Native adoptions 57
8. Required changes to Bill 77 63

Appendices:

I. Terms of Reference 67
II. Completed Ontario adoption orders 1921 - 1984 71

Bibliography and interviews 73

Chapter 1

INTRODUCTION AND FINDINGS

Background to the inquiry

Ontario passed its first Adoption Act in 1921. There was no mention in that Act of secret documents or sealed records pertaining to adoption. The second Adoption Act (1927) introduced severe restrictions in the disclosure of any information about adoption. Records were to be sealed and kept in the care of the Courts and the Registrar General. The legislative debates of the time do not yield any explanation of why secrecy was imposed. The coincidence of a similar Act with restrictive disclosure provisions having been passed in England one year earlier might provide an explanation.

In the intervening fifty-eight years there have been only minor changes in child welfare legislation to modify the secrecy of adoption records. The Child Welfare Act of 1978, by creating a Voluntary Disclosure Register, recognized the need for adoptees to discover more about their past. The legislation requires, however, that all three parties to an adoption -- the adult adoptee, the birth parent(s), and the adoptive parents — must register their consents before the Register may release adoption information.

In 1980 an adult adoptee named Mrs. Ferguson registered with the Voluntary Disclosure Register, but because there was no matching registration from her birth mother, identifying information could not be released. She had already been given non-identifying information, but felt that was not sufficient. Subsequently, Mrs. Ferguson applied to the County Court to have the contents of her adoption file disclosed. His Honour Judge Killeen ruled that Mrs. Ferguson was not entitled to have the sealed court records opened because her need was not compelling; nor was there authority in the Act to allow her request that the Ministry's files be opened. In an extended opinion, Judge Killeen criticised the Child Welfare Act for failing to define various types of information or provide criteria for its release. The legislation did not give any authority to release information from Ministry files. Judge Killeen concluded that until the law was changed he had no basis for deciding which information could be released. Therefore none could be disclosed. (Re Ferguson and the Director of Child Welfare (1983) 142 D.L.R. (3d) at p. 609(Ont. Co. Ct.))

Mrs. Ferguson then took her case to the Ontario Court of Appeal, which upheld Judge Killeen's decision. That court refused to consider the Charter provisions in the new Canadian Constitution. Since these provisions were not to go into effect until 1985, the Court did not feel they pertained to Mrs. Ferguson's case. (Ferguson v. The Director of Child Welfare (1983) 36 R.F.L. (2d) 405).

The decision of the Court of Appeal in the Ferguson case created considerable confusion among children's aid societies as to what adoption information to disclose and to whom. The Ministry of Community and Social

Services quickly responded to the Court decision with a notice to CAS's informing them that the Ministry would no longer release information through the Registrar. Societies were advised, however, that they were free to consult their own lawyers on what action they should take. The results were mixed; some large societies continued to give non-identifying information to adoptive parents, adult adoptees, and birth parents, but many small societies and a few large ones refused to divulge any information. The Ministry itself has released identifying information in medical emergencies. The situation is random, non-rational, non-distributive, and very difficult to monitor.

The proposals for new legislation to replace the Child Welfare Act of 1978 were made public through a Consultation Paper. Although the paper did not directly refer to disclosure of adoption information, there was a storm of protest against the disclosure provisions of the Child Welfare Act, and particularly against the requirement of adoptive parents' consent to disclose to adult adoptees. Subsequent briefs and letters to the Standing Committee on Social Development, which conducted hearings on the draft of the new Child and Family Services Act, almost unanimously objected to the restrictive disclosure provisions of the legislation. These objections were ignored by the Government, and Bill 77 was passed in December 1984.

Last spring, prior to the 1985 provincial election and before proclamation of the Act, the new Minister of Community and Social Services, the Honourable Dr. Robert Elgie, examined the adoption disclosure problems created or left unresolved by Bill 77 and asked me to be a Special Commissioner to report to him on the matter of access to non-identifying and identifying adoption information.

The Terms of Reference of the Commission (see Appendix I), in brief, asked me to define and describe identifying and non-identifying information about adoptees, birth parents, birth relatives, and adoptive parents. I was asked to recommend who should have access to either or both types of information and under what conditions. I was asked to focus on Sections 157 and 158 of Part VII of Bill 77.

Since my appointment, the present Minister, the Honourable John Sweeney, has announced that proclamation of the Child and Family Services Act has been delayed until November 1 for most sections, and that the section preventing disclosure of adoption information (Section 157) will not be proclaimed pending receipt of this report.

Method of inquiry

The report on disclosure was commissioned in mid-April 1985 and was to be submitted to the Minister by mid-autumn 1985. Given the limited amount of time available and the considerable amount of material that had been assembled from interested parties, I decided not to conduct open hearings.

The time available for the study was further constricted by prior commitments that prevented my beginning work actively until June.

I was immediately provided with a record of the 490 submissions to the Consultation Paper, with over 60% of these related to disclosure, as well as the 120 submissions to the Standing Committee on Social Development, of which over a third were devoted to disclosure. As well, the media were particularly responsive to the appointment of a Commissioner to examine disclosure. I was afforded opportunities to participate in radio-call-back programs, to have an extended interview published by one of the metropolitan Toronto papers, and to have radio interviews from several stations in Ontario. In each of these I attempted to declare my intentions of seeking much more open disclosure than was presently available in the Child and Family Services Act. I hoped through this approach to acquaint those interested in the issues surrounding disclosure with my position, and to seek to have them influence me.

Since beginning the assignment I have received over 300 letters, one petition (with over 2,000 signatures objecting to the restrictive disclosure provisions in Sections 157 and 158 of Bill 77), and several briefs from children's aid societies, updating or revising their previous statements on the issue. The letters I received, with four exceptions, were in favour of significant changes in the disclosure and availability of information to adult adoptees, birth parents, siblings, and others. Some of these letters may duplicate those that have been received by the Ministry and the Standing Committee. However, in the study of these latter submissions conducted by Beverly Leaver for the Commission, she too found, with only four exceptions, that the submissions supported much more open disclosure. (36) The petitions that she examined included 1,855 names and were a clearer expression of opinion on disclosure than the later petition sent to me which asked mainly for a general expression of displeasure over disclosure provisions.

The number of petitioners together with those who submitted briefs does not suggest that a referendum was held, but it does indicate a strong public expression of sentiment, opinion, and experience in favour of greater openness. Such an expression warrants serious consideration. The citizens of Ontario are not known to be reticent about expressing their opinions at public inquiries. The almost total absence of letters or submissions from those opposed to disclosure suggests that the opposition to disclosure is muted or very limited, since they have had ample opportunity to express their opinions and did not choose to do so. A poll, limited to viewers of TV Ontario's "Speaking Out" program of October 31, 1985 on Adoption Disclosure, called in at a rate of 9 to 1 in favour of disclosure of birth records.

Despite the decision not to hold public hearings, I was privileged to meet with all of the provincial co-ordinators of adoption in Canada; with staff representatives from many children's aid societies; as well as with officers of Parent Finders groups; birth parents, adoptees, adoptive parents, and staff from the Voluntary Disclosure Register and the Ministry who are concerned with adoption.

The British Council provided me an opportunity to examine at first hand the administration of adoption disclosure in England and Scotland. During my visit in mid-July, I interviewed the Registrars in each country, the social administrators in Scotland and England, counsellors in local authorities as well as those in the leading voluntary adoption agencies, scholars who had conducted social or legal research on adoption and child welfare, birth parents and adoptees represented through a national organization. The value of the visit will be examined later in this report, but it is noted here that both countries have been innovative in their disclosure process and have had a long enough experience to have completed research on the effectiveness of their legislation.

Ontario has not been alone among the provinces or among the U.S. and Australian states in its concern for revising rules for access to birth records by adoptees and others. Within the past five years many of these jurisdictions have been examining or revising their statutes with a view to liberalizing the disclosure of non-identifying and identifying information on adoption.

Leslie Hardy conducted a study for the Commission on legislative changes in Canada and the U.S., as well as a review of court decisions where the main question contested was access to birth records. (24) The trend in legislation in both Canada and the U.S. is towards openness. Judicial opinion, however, has been much more restrictive. The Attorney General of Ontario, the Honourable Ian Scott, observed in September 1985 that judges interprete the laws they have before them and do not make new ones. Their decisions were limiting with respect to disclosure because they were constrained by the law. The opinions that accompanied the Court decisions frequently recommended that legislators examine their disclosure provisions.

The question of disclosure and adoption has drawn considerable scholarly interest in Canada, the United States, the U.K., and Australia. A number of studies have been conducted inquiring into the effect of non-disclosure on adoptees, the results of reunion on birth parents, adoptive parents and adoptees, as well as inquiries into the kinds of information on adoption and how they might be imparted. These studies were reviewed for their potential contribution to the report.

It was also anticipated that there would be considerable statistical data available since 1921 that would indicate numbers and kinds of adoptions that have taken place in Ontario over that period. Ministry staff provided such data as could be obtained, but changes in data-gathering procedures over time have made comparisons difficult.

Finally, a search was conducted of background papers and provincial government documents that spoke to the question of adoption disclosure. It was expected that such information would have been available to inform the Legislature and the Cabinet leading to their decision to restrict access to adoption information. In fact, no papers could be found that spoke to that side of the question. To the contrary, the background papers commissioned by the Ministry over the past ten years indicated the opposite — that greater disclosure was necessary.

The method of inquiry, in summary, was the conduct of a review of documents, testimony, and legislation about our political jurisdictions, court decisions, research findings, reports of legislative committees, and practice experience in administering the disclosure of adoption information in Ontario, Canada, the United States, and the United Kingdom.

Findings of the inquiry

The Terms of Reference were accepted as an implied mandate that change was required in both the manner in which adoption information could be disclosed and in who should be eligible to receive such information. Although I had not made my own position explicit in respect of adoption disclosure prior to my appointment, the Ministry had reason to believe that my approach and disposition were toward openness in governmental disclosure of information. The appointment appeared to be a confirmation of this approach.

A short response to each of the questions posed in the Terms of Reference is offered at this point, without explanation or rationale to justify the points of view taken. The following serves, however, as an overview of my recommendations, which are presented in greater detail in the chapters that follow.

A. Access to non-identifying information

1. Should there be greater access to non-identifying information than is possible under either the Child Welfare Act or the Child and Family Services Act?

   Yes, there should be greater access for adoptive parents, adoptees, birth parents, and birth siblings and grandparents of the adoptee.

2. What should be considered as non-identifying information? Are there categories of information that should be excluded or are there circumstances under which types of information may be considered as identifying?

   Non-identifying information is that which does not disclose the identity of the adoptee, birth parents, birth relatives, or adoptive parents or their respective locations, or any other institutional identification which might lead to identifying the individuals listed. All other information of a social, medical, genetic, cultural, recreational, vocational, or personal nature should be considered as non-identifying.

Information with respect to the reasons for relinquishment of the child or the surrender of the child when it was taken into care is also included in non-identifying information. Information relating to circumstances of rape, incest, physical or sexual assault, or violence associated with the birth or the relinquishment of the adoptee should be disclosed with sensitivity and discretion by a counsellor who has had appropriate training.

Even the above non-identifying information pertaining to Indian and Native children should be considered as identifying information when it is to be made available to the child's Indian band or Native community, because many such bands and communities have a small population. Consequently, special disclosure provisions are recommended where notification to bands and Native communities is required under the Act. (See Chapter 7).

3. If non-identifying information were to be made available should there be criteria for disclosure? Should it be available upon request or should it be released only for health reasons for example?

The recommendation is that non-identifying information should be available upon request, but with interpretive counselling.

Medical, genetic, and social/cultural information pertaining to an adopted child should be made available to family physicians or attending physicians by the adoptive parents; if they fail to or are unable to do so, it may be provided by a Director appointed by the Minister.

4. Who should have access to non-identifying information? Adoptive parents, birth parents, minor adoptees with consent of adoptive parents, adult adoptees with or without the consent of adoptive parents, adult siblings of adoptees?

The recommendation is that adoptive parents, birth parents, minor adoptees with the consent of adoptive parents, emancipated adoptees over the age of 16 (without the consent of adoptive parents), adult adoptees (without the consent of adoptive parents), adult birth siblings of adoptees, birth grandparents of adoptees, and the physician of the minor adoptee as specified above, should all have access to non-identifying information.

4. Who should have authority to release non-identifying information? A Ministry Director, a children's aid society that arranged the adoption, a private licensee that arranged the adoption?

The recommendation is that each or any of the above should have the authority to release non-identifying information, prior to the adoption order and post-adoption.

5. Should there be grounds for refusal of access and if so, what should these be? If access could be denied, should there be an appeal mechanism?

The recommendation is that there should be no reasonable grounds for refusal of a request for non-identifying information except as qualified

above with respect to information to go to Indian bands and Native communities or in situations where the applicant for information shows evidence of intent to cause harm to him/herself or others. (See page 8 re: discretion in provision of information.)

B. Access to identifying information

1. Who should be eligible to have access to identifying information through the Register? Birth parents, adult adoptees, adult siblings of adoptees, adoptive parents?

   The recommendation is that access should be provided to all of those named above as well as to birth grandparents of the adult adoptee. Access should also be provided to Indian bands or Native communities, through a designated Indian or Native child and family service agency or an approved agency serving the jurisdiction of the band or community.

2. Should there be conditions or limitations on access rights for any of the above? For example should the adoptive parent's consent be required in addition to the consent of an adoptee and birth parent?

   The first recommendation is that the adoptive parents' consent should not be required to release identifying information provided that the adoptee is an adult.

   It is further recommended that access to identifying information be subject to accompanying mandatory interpretive counselling and the following consents:

   - **adult adoptees should have access, on request, to their original birth certificate (including the original statement of live birth) and to other identifying information in their adoption file; i.e., no consent required;**

   - **birth parents, adult birth siblings, and grandparents of adult adoptees should have access to identifying information about the adult adoptee, subject to the adult adoptee's consent;**

   - **adoptive parents and minor adoptees with their adoptive parents' consent should have access to information which identifies the birth parents or other birth relatives, subject to the consent of the person(s) to be identified.**

   - **where contact or reunion is sought by an adult adoptee or by a birth parent, adult birth sibling, or birth grandparent of an adult adoptee, the consent of the person(s) to be contacted shall be required. Any of the above-named may indicate their consent for contact or reunion by registering with the Disclosure Register.**

3. What should be the mechanism for disclosure of information either identifying or non-identifying in serious medical situations? Who should have the authority to disclose and who should be given access?

   The recommendation is that no distinction be made with respect to medical information that is part of the non-identifying information; i.e., it should be provided on request. It is also recommended that birth parents and adoptive parents be encouraged to update the health and medical/genetic information in the adoptee's file so that societies, licensees or the Ministry may inform the affected parties as appropriate.

   When identifying information is requested in a serious medical situation, the consents required above (#2) should be sought by the Disclosure Register. Where the consents cannot be obtained and the need for disclosure is documented, a Director appointed by the Minister should have discretion to disclose the information without the required consents. Near death or death-bed reunions would be considered serious medical situations. Organ, tissue, or blood needs could be included as evidence of need to receive identifying information.

   Where the emergency concerns the health or safety of a minor adoptee and the adoptive parents fail to give consent, the adopted child could be taken into care for its protection if that were required.

Discretion in the provision of information

A further recommendation is that discretionary authority should be provided in Bill 77 to a society, licensee, or Ministry Director to withhold information in exceptional circumstances such as where there is an admission by the applicant of intent to inflict harm to others or to oneself. These circumstances would serve as grounds for delay in providing identifying or non-identifying information. It is also recommended that the refusal to provide information or to delay its provision should be appealable to a Director appointed by the Minister. The Director should appoint a hearing officer to determine the disposition of the complaint. If the complainant remains unsatisfied with the result of the hearing, the Ministry or agency may be taken to court.

The Terms of Reference asked the Commissioner to consider whether or not any of the recommendations should be implemented retroactively or should apply only to adoptions that take place after the recommendations might be implemented. I was also asked to consider the manner in which the recommendations should be implemented, including possible requirements for counselling where information is disclosed.

It is recommended that all of the recommendations on disclosure and access to records should be implemented retroactively, in that the changes in disclosure are meant to redress the wrongs or limitations imposed upon birth parents, adoptees and adoptive parents by previous legislation.

The recommendation with respect to the manner of disclosure is that the release of non-identifying or identifying information, by or through a children's aid society, a licensee, or the Disclosure Register, shall be accompanied by counselling. A pre-and post-adoption counselling service shall be formally required of all agencies involved in adoption. The service should be offered pre-adoption, immediately post-adoption, at crises in the life of the adoption process, and in all requests for information or for reunion. A corollary recommendation is that counselling shall be mandatory for the applicant for information.

With respect to requests for search or contact, it is recommended that the Disclosure Register, or by referral a children's aid society or other approved agency, provide discreet intermediation and search capability on behalf of an applicant to the Register. The search shall be to determine if the person sought wishes to register, thereby indicating his/her decision to consent to contact or reunion or to refuse contact or reunion.

The Terms of Reference did not refer specifically to a number of topics which I felt were too important not to be addressed in this report. These include the necessity for post-adoption counselling services, the collection and security of adoption information, the roles and responsibilities of children's aid societies, private adoption licensees, and the Voluntary Disclosure Registry.

With respect to the latter, **the recommendation is that the Voluntary Disclosure Register be renamed the Adoption Disclosure Register and that its mandate be expanded to include public education and information as well as active but discreet search and intermediary counselling services.**

Another topic not identified in my Terms of Reference, but which relates very much to the issues of disclosure, is the requirement under Section 134(3) of Bill 77 that where a children's aid society intends to place an Indian or Native child for adoption, the child's Indian band or Native community must be given thirty days' written notice. Chapter 7 of this report begins to address some of the complex issues involved in trying to safeguard the individual rights involved in the placing of Indian and Native children for adoption, while at the same time recognizing the collective rights of Indian bands and Native peoples.

The recommendation that the original birth certificate of the adoptee (including the original statement of live birth) be made available to adult adoptees may require amendment to the Vital Statistics Act of Ontario as well to the Child and Family Services Act. Since the Vital Statistics Act is the responsibility of the Ministry of Consumer and Corporate Relations, it is recognized that this recommendation goes beyond my Terms of Reference.

Lastly, my Terms of Reference were silent with respect to the disclosure of information relating to children born through artificial insemination, in vitro fertilization, and surrogate motherhood. These matters have recently been the subject of a report by the Ontario Law Reform Commission. (72) By way of comment, I would suggest that the caution and secrecy that are recommended by that report should be viewed as separate and apart from the adoption disclosure provisions of this report. Apparently the artificial means of reproduction carry with them today the same terror that sexual means of reproduction did in the 1920's. Safeguards sought now in the use and disclosure of surrogate or artificial reproduction are similar if not identical to the safeguards and secrecy visited upon the birth parents and adoptive parents of the "illegitimate" child of earlier decades.

Parenting whether by adoption or by birth is the provision of long, continuing, and loving care to a child. If the adoptive parents are accorded both the expectation and respect that is due them in the accomplishment of that task, then the question of access to knowledge of the adoptee's original parent(s) may be seen not as a desire for other parents but rather as the provision of basic facts for the benefit of the adoptee.

Chapter 2

ADOPTION AND SECRECY

The present controversy over the sealed records of adoption challenges some of the assumptions, but not necessarily the institution, of adoption. Laws of adoption were passed in Ontario in 1921 and 1927. Similar legislation was approved in England in 1926, in Scotland in 1930, and in most of the states of the United States and Australia during that same period. Since 1921, over 200,000 persons have been legally adopted in Ontario. There is a general acceptance of the institutional form of transfer of a child from biological parents to adoptive ones. The acceptance of the institution is supported by the satisfaction expressed by adoptive parents and the expressed and implied satisfaction of adult adoptees. The latter inference can be drawn from research evidence in Canada and other countries where most adoptees, despite access to disclosure of their origins, do not seek reunion with birth parents, or if they do achieve reunion, reaffirm their wish to remain part of their adoptive family. More recently, however, there are also revelations of feelings of loss, betrayal, and longing for reunion expressed by birth parents, who have traditionally been the silent partners in the adoption triangle.

Problems leading to modern adoption law

Adoption has succeeded over the years by responding to several problems related to the care of children.

Prior to the first Adoption Acts in Ontario, the attention of governments in the English-speaking world was drawn to the indenturing system of placing orphaned, abandoned or surrendered children with families who could then exact as much labour as they wished from the children. Canada, and Ontario specifically, received large numbers of such children, particularly Dr. Barnardo children who were placed with farm families. Many of these children suffered from severe hardship because of the treatment they received from their employer/families. The children that Dr. Barnardo rescued from the city streets of England were not necessarily illegitimate but were from poor families who could not manage to feed all their children and who lived at a time when there were no social provisions for families. (67) Adoption was advocated by "child savers" as a more appropriate and humane protection for children then indentureship. It also served to relieve the state and charitable organizations from the responsibility of caring for these children in residences and orphan homes.

A second problem which required attention was that, following World War I, there was a marked increase in the number of children born to unmarried women. The morality of the post-war period saw a loosening of the strictures imposed by Victorian ideas of propriety, and with it an accompanying public alarm at the prospect of illegitimate children becoming a charge on the government or on charitable institutions. "Never darken my doorstep" was not confined to parents in a nineteenth century melodrama addressing their wayward daughter with babe in arms. The parents of the

1920's maintained the same view about out-of-wedlock birth and the shame and stigma of both their daughter and the grandchild. They could not be counted on for support.

Nor were birth fathers particularly eager to confess their paternity. A "shotgun" or forced marriage was one solution to a believed paternity. More often, though, the birth mother bore both her unborn child and her shame, in secrecy if possible, and the father was not often named. The woman became multiply vulnerable. She was accused of promiscuity, immorality, failure to resist advances, and carelessness in bringing into the world a child who would be stigmatized. She had no birth control measures to protect her; no legal abortion to rid her of a child conceived by rape or incest; no standing as an independent person, either because of her youth or her gender. She did not even have the right to vote until 1920. The shame of sexual misbehaviour and the stigma of illegitimacy which the child would have to carry could be avoided by an adoption to respectable adoptive parents.

In the twenties and thirties, society was not insensitive to the unmarried pregnant woman's needs. Homes for unwed mothers were established by religious and charitable organizations mainly in larger cities where anonymity could be assured. As recently as 1970 there were 25 homes for unwed mothers in Ontario. The staff at maternity homes, the girls' mothers who arranged the placement of their pregnant daughters, clergy who were the confidant or confessional receiver of information about the girls' condition, social workers of children's aid societies and other agencies, and common wisdom, collectively urged the young mother to give up her child and begin her life anew as if the event never happened. Even though all might not be forgiven, there would not be a constant reminder of what had befallen her. While there was no conspiracy, the effect was the same: babies were given up for adoption. In retrospect many birth parents believe that they were coerced into surrendering the baby. It must be remembered, however, that the care, opportunities and resources for single parents — as meager as they seem today -- were almost non-existent as recently as two decades ago, and the birth parent's decision did have a reality-base associated with the pressure. (1)(6)(18)24)(30)

A third but less prominent problem addressed by adoption was that of adoptive parents attempting to cope with the fact of their infertility and their inability to demonstrate their wholeness as a family, represented by having children. The morality which Canadians and others brought into the twentieth century from the middle-class, nineteenth-century attitudes to sexual relationships defined these in terms of sin, shame and guilt. The sexual questions were not all on the birth parents' side. Many married couples who were childless were viewed or thought of themselves as incomplete. Before our knowledge of infertility included males, women were made to feel fully responsible if they did not bear a child. Psychological explanations were added to incapacity to conceive, and the married and infertile woman needed a child to make herself and her marriage whole. Although infertility is essentially physiological, it was associated with sexual adequacy or inadequacy. If a child were to enter an adoptive home, the secrecy of the child's origin was often maintained to create a fiction or illusion as if the birth had occurred to the adoptive family.

Parents of adopted children were encouraged, indeed required for all legal purposes, to consider the child "as if born to" them. No association with the birth parent was permitted by law. Adoptive parents could treat the child as their own and raise it accordingly, without reference to its origins. They were often told little or nothing about the child's origins or birth parents. What they were told was adapted from the facts. If rape, incest, or any other negative circumstance was known by the private adoption agency or professional or by the children's aid society, that information was hidden, cosmetically changed, or not divulged in a way that the truth could be known.

Both adoptive parents were presumed to be fully involved in the adoption secret. In the years after World War II it was more typical for families who had economic means to adopt, and for the mother to stay at home to care for the child. The disclosure to the child of its adoption was a hit or miss affair, with some initial acknowledgment and then silence thereafter. It was not perceived by the adopting mother and father as necessary or desirable to confuse the child about a dubious past. The parents knew that adoptees might be viewed suspiciously or negatively by other children or by neighbours. As well, their having adopted a child might raise questions of their own fertility and completeness. The avoidance of these risks could best be accomplished by as little mention of adoption as possible. Families even moved from one neighbourhood or city to another to make keeping the secret easier. (18)(19)(30)(39)(41)(45)(61)

Assumptions in support of secrecy in adoption

The first assumption that underlay the laws and procedures of modern adoption was that it was better for a poor child to have a decent home, with new parents who could afford to keep the child, than to have the child suffer neglect, deprivation and a very dismal future if left in the birth parents' home.

A second assumption was that illegitimacy was so severe a stigma that only by being born anew with a new set of parents and an altered and "fraudulent" birth certificate, publically sanctioned of course, could the stigma be hidden. It was never to be erased.

A third assumption was that the birth mother would be shamed by society and carry the guilt of her illegal and immoral act throughout life if faced with the constant reminder by the presence of her illegitimate child. (Birth fathers who were not forced into marriage could successfully avoid the designation of putative father.) The surrender or relinquishment of the infant to a safe haven would remove the evidence, and the birth mother could pretend that the event never happened.

The fourth assumption was that adoptive parents were so eager to have a child to claim as their own, and thereby avoid the shame of their incompleteness in being childless or their infertility, and also avoid the recognition of their charitable act, that they would accept the fiction that the child was born to them.

Step-parents and relatives have, since very early times, adopted children within their extended family. The first three assumptions above may apply to these adoptions. The decision of parents who had children of their own to adopt another's child, and often a child with special needs, is a more recent phenomenon. None of the four assumptions referred to bears on these latter parents' decision.

The collusion to hide the facts, among all the parties to adoption, was the somewhat tainted basis upon which the institution of modern adoption was founded. Yet adoption has survived with obvious benefit to most of its participants. The secrets could not have been hidden if there had not been agreement that records of the adoption should be sealed and maintained inaccessible by the courts. The secret was considered relatively safe from others if the participants didn't tell anyone. Birth mothers were not expected to brag of their exploits; adoptive parents would avoid telling the child the truth or even about the fact of adoption; child welfare and adoption agents were constrained not to reveal information except for good cause or "for compelling reason".

Adoption, or some form of transfer of children, has been available for millenia, at least since the time of Hammurabi over 3,500 years ago. To reveal an adoption in ancient Sumeria might expose one to the risk of having the tongue removed. The Old Testament of the Bible has many stories of adoption. An early and dramatic story was of Moses being adopted by the household of the Pharaoh and accepting the fiction of the "floating cradle" as being the equivalent of the birth vehicle. Later, Ruth and Naomi represented an open adoption. During the Athenian period a thousand years later, a character in a play of Sophocles bemoaned the possiblity of having been adopted and that the fact was hidden from him. (34)(64)

Hundreds of years later the Romans were more pragmatic with regard to adoptions. They were not concerned with secrecy but rather with open negotiations in order to adopt a child from a suitable family so that their lineage could be maintained. Secrecy was not included in the adoption laws within the civil codes of Spain or France, more than a thousand years after the Romans, because their motivations were similar in wanting to assure inheritances and family continuity. The social histories of these times rarely refer to the poor or to the peasantry, and there is no record except for relative adoption which were not legal processes anyway. (18)

It was not until after World War I in the English-speaking countries that secrecy was introduced as a requirement in the adoption process. Scotland resisted part of the temptation to hold records under seal and permitted the release of original birth certificates in 1930 to adoptees who were seventeen years of age. Israel, after its independence in 1948, adapted from its biblical origins and its commonwealth traditions an adoption disclosure procedure that permitted the receipt of identifying information. The Children's Act of 1975 in England made identifying information available to adult adoptees.

There is no record or published rationale of why Scotland decided to release such information at the age of seventeen. The explanation provided for the Israeli decision rested in considerable part on the holocaust experience and the dispersal of Jews throughout the world. The survival of the people was considered of prime importance and other assumptions, whatever they may have been, were not taken into consideration as being persuasive. In England there was considerable debate, beginning with the Houghton Committee in 1972 and extending through to 1975, with concerns expressed about illigitimacy, unexpected and unwanted knocks on the door, and about the risk of inheritance challenges. Triseliotis' study of Scottish adoptees allayed most of these fears and was influential in the recommendation of passage of a disclosure law within the Children's Act. (45)(63)

The 1927 legislation which sealed adoption records in Ontario followed on the heels of British legislation in 1926 which required sealed records, and probably drew its inspiration from this source. All identifying information since then has been locked in a figurative closet, if not a literal one. Keys to the adoption secrecy closet may be found in the testing of the initial assumptions and the conditions that gave rise to these challenges.

Challenges to early assumptions

The early assumption was that children in poverty would be better served if they could be placed in the homes of the well to do and have a better upbringing. This assumption was well founded in 1927. There were few public services, and the experiences of orphanages and indentureship proved to be inadequate and harmful to many children.

Problems of poverty have been addressed quite differently in Canada in the sixty years since the 1927 Adoption Act. The care of children by single or unemployed or unemployable biological parents may be considered feasible today, whereas it was almost unthinkable in the 1920's. The introduction of needy mothers' allowances in the 1920's, public assistance in the 1930's, family allowances in 1945, the Canada Assistance Plan in 1966, together with public housing and OHIP, have collectively provided resources to be considered by an unmarried mother wishing to keep her child. Poverty should no longer be claimed as the sole excuse for removing a child from its family.

Health care and hospital benefits together have enabled pregnant unmarried women to have a choice in delivery of their child. The number of homes for unmarried mothers in Ontario has been reduced from 25 in 1970 to 12 today. Pregnant girls and women now may stay in their own homes, in school, or in their employment until ready to deliver. The support of many families to daughters who become unmarried mothers has modified the effects of the isolated woman in poverty and the assumptions about where care may be provided.

A number of factors have combined today to reduce both the number of babies born and the pressure to surrender them for adoption. These include sexual permissiveness, the changing roles of women, technical advances in birth control measures; changes in the law to acknowledge common-law relationships, cohabitation, and the birth of children resulting from these relationships; changes in law that permit access to therapeutic abortions; ease of obtaining a divorce; and support measures for single parents provided by government.

Social agencies in the late 1960's and thereafter have been careful to indicate to unmarried mothers that they may have some resources to rely upon if they choose to keep their child, and that they should consider the options of either keeping or relinquishing their child for adoption. The provisions of these choices modifies the strength of the original assumption about adoption.

Although private adoption professionals and agencies are also expected to point out the options to birth parents, they may be perceived by birth parents as overemphasizing the positive benefits of adoption because they are in the adoption business and their fees are paid by adoptive parents. Birth mothers who go to private adoption licensees may therefore find it difficult to change their minds. Nevertheless, the fact that there are supports today to enable single mothers to keep their children challenges the earlier assumption that such women were virtually required to give them up.

The second assumption to be challenged was that illegitimacy was stigmatizing and that any action would be justified to avoid that outcome, including maintaining a secret file of the original birth. Ontario has responded to the question of illegitimacy by including in its Children's Law Reform Act of 1980, Section 1(1) "for all purposes of the law of Ontario a person is the child of his or her natural parents and his or her status as their child is independent of whether the child is born within or outside marriage."

Lawmakers are not usually known to be in advance of public behaviour or attitudes, nor should we expect that Ontario's would be an exception. Many jurisdictions preceded Ontario in voiding the definition of illegitimacy. The Legislature in 1980 felt no risk in declaring as law what was a fact in life. Though they felt safe in general on the question of illegitimacy, they maintained the fiction of adoption in the same Section 1(2) "Where an adoption order has been made the child is the child of the adopting parents as if they were the natural parents." There did not appear to be any compulsion to be logically consistent.

If, in 1927, morality was the governing idea behind the stigmatizing label of illegitimacy, governments were in support of that morality. Since 1927, however, the Federal Parliament and Ontario Legislature have modified their respective stands on a number of questions which touch on, if not directly impinge on, that morality. There are now laws permitting divorce, equal status for women, public access to the purchase of contraceptive devices without prescription, permission to perform abortions, teaching of sex education in the schools. These examples effectively condone and do not limit or prohibit sexual intercourse outside of marriage. The columns of advice to teenagers and others have come a long way since Dorothy Dix and Emily Post.

Current public morality has indeed changed. There is no censorship of television soaps which deal with the four A's of abortion, adoption, adultery and amnesia. Amnesia appears to be the contemporary equivalent of secrecy or the "sealed mind". It is a useful melodramatic metaphor that is resolvable with a blow on the head -- a literal deus ex machina! The issue for the Minister and for the Ontario Legislature is what kind of analagous blow would be needed to free the sealed record of adoption from its legal amnesia. Recovery from amnesia usually occurs after a sufficient length of time elapses. It may be that the sixty years that have elapsed since the first secretive enactments for adoption should be sufficient time to recover!

The third assumption made in 1927 was that birth mothers would readily relinquish their illegitimate child in order to erase the daily reminder of their shame. Studies of birth mothers since 1965 in the U.S., U.K, Australia, and Canada confirm the opposite. Birth mothers have not forgotten their child, and many have not forgiven themselves or others for having obliged them to relinquish their child. Most are grateful for the care the child received from the adoptive families, but many also hope for reunion and contact when the child becomes an adult. The research studies usually involved volunteer participants or those known to social agencies. The type of respondent in these studies does not appear to vary from one continent or country to another. Austrialian, American, Canadian, and British women have responded in almost identical fashion. (8)(16)(32)(60)(70)

Very recent Canadian studies of reunions of birth parents and adult adoptees, either connected with social agencies or with Parent Finders, indicate that the fantasies of the reunion have been achieved and the reunions are successful in 9 out of 10 cases. The differences among age cohorts, such as birth mothers now over 60 years old compared with those 40-50 years old and 20-30 years old, reflect the attitudes one would expect with each generation. The oldest group were resigned but not eager to have their past uncovered, though they would be helpful if their child/adult needed to know his or her past. The middle age group were more accommodating and saw the value of contact, with less concern for the divulgence of their having given birth out of wedlock. The youngest group were looking forward to reunion and retained a considerable amount of anger at their having been obliged to relinquish their children. (58)(59)

American studies in 1984 of Concerned United Birth Parents show, for a selected group at least, that the effect of relinquishment persisted throughout the lives of the birth parents and affected their subsequent marriages and fertility. Other researchers in the U.S. refer to hundreds of letters received from birth parents revealing their loss and need for reunion or information about their child. British studies are clear about the value of the reunion as an important closing of a circle. Australian researchers in 1985 identify the depth of loss as a significant factor in later adjustment. Birth parents have emerged from their closets of secrecy and have indicated that though life does and did go on for them, they were not able to forget nor did they intend to. Their concern for their need to establish contact with or obtain knowledge about the relinquished child transcended any comparable need for confidentiality.

As Commissioner, I have received many letters from birth parents, as well as petitions signed by thousands with similar messages urging disclosure. One is struck with the pain and apparent honesty in revealing personal information without any request for confidentiality. There is an almost consistent request that the adoptee not be hurt in any way -- nor should the adoptive parents! Metro Toronto CAS's report on birth parents noted that similar sensitivity to the feelings of the other parties to adoption was not equally present among adoptees or adoptive parents. (58) Birth parents who have been participants in the several studies represent a view that challenges the earlier assumptions about their need for secrecy and, more pertinently, any continued belief in those assumptions.

The fourth assumption that was made was the acceptance by the adoptive parents of the "as if born to" myth and everyone's acting as if it were true. On the contrary, most adoptive parents in American and British studies indicate an acceptance of the reality of adoption and support for their adopted children, now adult, in the search for origins. (21)(34)(64)(114)(124)(129) They are as a group, though, much less supportive of access to disclosure of sealed information about adoption than adoptees and birth parents. Resistance is more common among male than female adoptive parents. Their fear of loss is compared with the birth parents' actual loss. Many years of parenting makes their possible loss seem even greater than for those parents who relinquished at birth. The fact that loss does not occur with any significant frequency is irrelevant to the anticipated possibility. Studies confirm that most adoptees claim a stronger bond with adoptive parents after reunion with birth parents has been effected. (11)(21)(27)(57)(64)

The Scottish studies and those in England are supported by some, but not all, U.S. studies in identifying influential factors in the adoptee's desire to search. The adoptive parents in some cases were perceptive in recognizing a weaker or conflictual relationship with their adoptee. Some studies have indicated that those adoptees whose relationship with the adoptive parent was poorer were the most eager to engage in search for birth parents. However, Lifton in the United States and Kirk in Canada show that adoptees need origins and are more independent and responsible because they seek more identifying information. They concluded that it was a sign of comfort with their adoptive parents that permitted them to search, rather than the contrary. There has also been a re-evaluation of adoptees' search focused on the undisclosed adoptions. Adoptees who were told little by their adoptive parents, and who believed the topic was taboo or closed, developed a stronger need to search than those who had been fully informed. Their closeness to their adoptive parents and their concern about possibly hurting them only deferred or delayed their search. (4)(20)(31)(35)(44)(55)

The disclosure of the fact of adoption is a contradiction of the bestowal of an "as if born to" status. Regardless of the language of the law, practice since 1960 includes the strong advice to adoptive parents to tell early, and to tell all that is known by the time the child reaches adolescence. The sharing of the fact of adoption, the chosenness of the child, the revelation of available facts of another past obviate the language of present and past legislation. Adoptive parents have no need for the fiction any longer.

The truth of the above is reinforced by looking at the ages and circumstances of those being placed for adoption today. In the last few years the majority of adoptions have been by step-parents or relatives of the child (see Appendix II). Moreover, about 60% of the children adopted today are four years of age or more, and over 40% are aged seven or older. Clearly these adoptees know they have other birth parents and relatives.

Evolving definition and practice of adoption

In examining the key questions of disclosure -- of who shall know and how much shall be known -- it is important to recognize changes in both the definition and practice of adoption over the past twenty years. These changes began to evolve in the mid-sixties but have intensified in the last ten years. We have come to recognize that adoption is a social, familial, and communal process that does not cease with the formal adoption order being approved and sealed. Our definition of the various participants in adoption and of their roles and responsibilities have also evolved during this period.

Adoptive parents are seen today as having responsibility to disclose to the adoptee non-identifying information about the circumstances of birth and adoption, about the background of the birth parents and other kin, about the health history of these kin and its possible usefulness. Adoptive parents are parents in the full sense of having the care and responsibility of the adoptive child. They are parents in the full sense of preparing their adoptive child to live and behave as an adult with all the responsibilties and rights of an adult. Adoptive parents, like all parents, have the responsibility of caring for the psychological and social needs of the adopted child. As with all families, failure to do so may result in the child being removed from the home. Success leads to independence of the adoptee, yet the maintenance of the familial bond.

Birth parents, though relinquishing the child for adoption and care by other parents, continue as birth parents of the child. As birth parents they must generally have no contact with the child (except if it is an open adoption) until the child is an adult. They would seem, however, to have a moral obligation to report on changes in health experienced by either birth parent, so that these may be conveyed to the adoptive parents and the adoptee as well as to the adoptee's physician. Birth parents may wish to resume contact or establish a reunion with the birth child when the child becomes an adult, and may want to receive non-identifying information about the adoptee and adoptive family until the child turns eighteen. Alternatively, they may not wish to reunite and may close off all contact with their birth child. They may wish to forget their having given birth to the child. Each wish represents an act on their part associated directly with the adoption process.

The **adoptee**, if told that he or she is adopted, may choose to know more about his origins. As an adult the adoptee may wish to establish contact or reunion with birth parents or siblings, and may wish to have all the information available about his birth parents and family, including identifying information. He may alternatively choose to ignore his birth parents and siblings and live his life only as an adopted child of his adoptive parents. Each wish represents an act on his part associated directly with his adoption.

Society through its legislation, its governments, and its courts participates in the adoption process. Legal processes have formalized a relinquishment in adoption. The adoptive family is subject to scrutiny before adoption is made final. Adoption records are under court jurisdiction and sealed, to be released only under specified conditions. Who may adopt or place for adoption, and how they are to be regulated by statute and procedure, are governmental responsibilities. All information, identifying and non-identifying, about all the participants in the adoption process is kept by the government or its agents, and release of such information is regulated. Governments may assist or be neutral or resist the reunion of adoptees with kin. These actions are all determined by policy which legislatures have the opportunity to discuss and agree upon. They are deliberate and positive in the sense of determining the actions of both the government itself and of others.

Others in the community are also involved in the adoption process, and these may not be ignored. Included are groups or associations of adult adoptees who seek or have established reunion with birth parents; birth parents who have engaged in similar pursuits; mutual support groups for adoptive parents; social agencies which have a licence or mandate to be involved with adoptions; siblings who seek each other; media that assist in advertising children available for adoption. The media appreciate the drama and special meaning of adoption reunion and of injustices, real or perceived, in connection with adoption. The media educate, influence and modify views on adoption held by the public.

All of these factors have combined to create increasing public pressure for more openness in adoption.

Continuing arguments against disclosure

Despite these pressures for disclosure, some individuals may still believe that the release of sealed or confidential information about the facts of adoption could be harmful to them or others. In the material reviewed for this report, the very few advocates of restrictive disclosure claimed the following:

1. Adoptive parents would lose their children if adoptees learned of their origins, and sought or established reunion with birth parents.

2. Adoptive parents believe they had an agreement with the government to maintain secrecy of the adoption and that the agreement was irrevocable.

3. Some adoptive parents believe that adoptees are indeed their children, over whom they may continue to exercise full parental authority regardless of the age of the adoptee.

4. Adoptive parents, some social workers, and other individuals fear that the disclosure of facts about adoptees' birth and relinquishment would be painful and harmful to the adoptees who should be spared this trauma, for ever if possible, but at least until they are more mature. The ages of 20 or 25 or 30 were suggested as evidence of maturity.

5. Adolescent adoptees, like many adolescents, have problems becoming adult and struggling with the authority of their adoptive parents. The opportunity to discover birth parents would precipitate more conflict and should be avoided until they have matured.

6. A few adoptive parents and birth parents expressed concerns that adoptees would become angry that they were relinquished for adoption and would seek to retaliate.

7. Some adoptive parents had failed to inform their adopted child or had chosen not to inform their adopted child about the fact of adoption. Giving the adoptee the opportunity or right to discover this fact would undermine their relationship with the adoptee.

8. Adoptees were considered to have been taken into the new family and had no need for their biological parents. They had been cared for (usually since infancy) and were in fact the child of their adoptive parents. There didn't seem to be any good or compelling reason for the adoptee to seek or receive information about his birth family.

9. Birth parents should be protected from having old and forgotton wounds opened or having their past exposed.

It is noteworthy that most of these claims reflect the concerns, and perhaps the insecurity, of some adoptive parents. It might have been expected that the strongest objections to disclosure would have come from birth parents, who presumably have the most to hide. Only one letter was received on behalf of birth parents upholding the need for continued secrecy.

These arguments against disclosure, can, I believe, be challenged by both recent research and experience in Canada and elsewhere. I shall try to answer each of the claims against disclosure in turn:

1. That adoptive parents would lose their children if adoptees learned of their origins and sought reunions:

   Research studies in Canada, the United States, Britain and Israel on reunions of adoptees with birth parents or siblings identify a high satisfaction rate with the reunion (90%) and an equally high expression of love and affection for their adoptive parents. When the adoptive relationship was not a good one as perceived by the adoptee, reunion or information was sometimes a substitute; but the inaccessibility of information did not prevent the alienation from occurring. (11)(12)(27)(34)(39)(52)(53)(57)

2. That there was an irrevocable "agreement" with adoptive parents to maintain secrecy:

   Although in earlier times adoption workers may have assured their clients -- both adoptive parents and birth parents -- that secrecy would be maintained forever, in fact there never was any such contract or agreement in law between the government and the participants to adoption. The law since 1927 has required that adoption records be sealed up by the courts. But the law can be changed. Initially the sealed records could be opened up only by the courts; more recently sealed information can be disclosed through the Voluntary Disclosure Register. As new situations or understandings arise, governments are responsible for modifying, correcting, or abrogating the law if it is in the public's interest to do so. No new legislation could ever be written if this were not the case.

3. That adoptive parents may continue to exercise full parental authority even over the adult adoptee:

   Parental responsiblity and affection for children can, and indeed often does, last a lifetime. Parental authority, whether of adoptive parents or of natural parents, is limited to the childhood years, and ceases when the child becomes an adult. In Ontario for most purposes adulthood is deemed to arrive when the individual attains 18 years of age. Young people who reach 16 years of age can move out of their natural parents' or adoptive parents' home and declare themselves to be independent and emancipated and no longer under the authority of their parents.

4. That disclosure of facts about birth and relinquishment may be painful or harmful to adoptees:

   The protection of children from unnecessary pain or disruption is a reasonable duty that parents should fulfill. When the child becomes an adult, however, parents no longer have the responsibility, authority, or capacity to prevent painful facts from being revealed. Parents may choose to inform their children about illness, death, disease, crime and other painful events in life from the time they are very young. Lack of information may prove to be as harmful or perhaps more so than the revelation of the truth.

5. That disclosure, particularly to adolescents, may encourage conflict with adoptive parents:

   Adolescent children may have more questions about who they are and what they will become than they did at earlier periods in their lives. Facts about their adoption, even non-identifying ones, provide some background about their birth parents that could be relieving. Research studies in England on adoptees who seek birth certificates and other information express relief and satisfaction that the adoptees now know something, where previously their past was a mystery. Canadian studies have verified the English results. (11)(12)(40)(41)(42)(57)(63)

6. That adoptees might seek retaliation on birth parents:

Adoptees, as any other group, may have among them some few who would have criminal intentions. The law cannot be prescriptive or presumptive about adult adoptees' behaviour without evidence that they do indeed behave in this way in significant numbers. No such evidence exists. While adoptees have been reported to be disproportionately represented in child guidance clinics in some American studies, the explanations are not definite as to cause. It is attributed in part to their adoptive status and the "immunological" problems encountered in "transplanting" a child from a biological to an adoptive home. Also, adoptees are usually children who were placed with middle-income families, who would be more likely to use child guidance clinics than other families, either poorer or wealthier. (31)(41)

7. That disclosure of adoption would undermine adoptive parents' relationship with their adopted child:

Practices have changed in the advice given adoptive parents in telling children about their adoption. Before the 1960's there were arguments made that the less said the better. Since then the advice has been strongly in favour of telling as much as is known from the very earliest years of the adopted child's life with the adoptive family. If families since 1960 have chosen not to tell their children very much , they are indeed facing the risk of their adult adoptees' questioning whether any truths were told about their past. Adoptees who were placed before 1960 are now at least 25 or 26 years old, and are entitled to know the truth about their origins. Their mature years may help them appreciate their adoptive parents' intent and not have that interfere with their relationship.

8. That there is no real "need" to know about the birth family:

Research in Scotland, Canada, and the United States supports the adoptee's need for kinship with biological families, for psychological well-being realized by knowing one's origins, for genetic information that will affect the adoptee's life, and for other medical information about birth parents and relatives that may influence the way adoptees live, marry, and have children.

Generally, however, the courts have not yet been persuaded that there are compelling psychological reasons why an adoptee should learn about his or her origins. Adoption laws have not specified or reflected psychological or social need as "compelling", and the courts have usually not seen fit to add their sympathies, thoughts, or perceptions to the law. Even in those cases in Ontario where the judges appreciated the problem of not knowing about one's past, they considered that they were not empowered to change the law. (29)

Two states in Australia, 17 in the United States, 4 provinces in Canada, as well as England, Scotland, New Zealand, Finland, Sweden and Israel are among those political jurisdications that have recognized in law the value of disclosure of origins, including identifying information, to adoptees and some birth relatives. Changes in judicial rulings on "good cause" or "compelling reasons to know" will be directly related to such legislative changes that instruct the judges and the law.

9. That birth parents should be protected from disclosure:

Birth parents have revealed in studies in the United States, Canada, and Australia that their interest in renewing their relationship with their relinquished child is strong. The prevailing view expressed by birth parents is of loss which, though it diminishes in part over time, is never fully accepted. Many of the birth parents in the studies reflect on the coercion and the impossibility of their situation when the relinquishment occurred. They do not regret the work of the adoptive parents and are very appreciative of them; however, the time elapsed since the relinquishment offers them a renewed possibility of reunion. (21)(57)(70)

Chapter 3

DISCLOSURE: AN OVERVIEW

Arguments for disclosure

In letters and submissions that I have received or that have been sent to the Ministry from adoptees and adoptive parents, as well as in research studies of adoptees in Canada, the United Kingdom, and the United States, it is unequivocally argued that adoptees need to know their origins. This need is deeply felt and psychologically very important. The incompleteness of the adoptee as a person is said to rest in a lack of knowledge of his origins. Adoptees will always be the adopted relative of their adoptive parents' families; they are not blood relatives and cannot enjoy or claim kinship with their adoptive relatives. Only their adoptive parents can accept them on an "as if born to" basis. The rest of the adoptive family, including siblings if any, were not party to the adoption.

David Kirk, the author of Adoptive Kinship, has referred to an imaginary relative who does not know she is adopted, although she is now over fifty years of age. He goes on to describe all the rest of the family -- uncles, aunts and "cousins by the dozens" -- who knew she was adopted. She was a first-generation "immigrant" into this family's land. Her acceptance by them would be no greater or less than any other immigrant who has to find her way. Although she herself knows nothing of her "country of origin", it is to that place that she is referred to, likened to, ascribed to, even if she never lived there. She may experience great friendship by the kin of her adopted family, but her own kin are elsewhere. As a "real" immigrant she would not be prevented (with political exceptions) from learning about or visiting her country of origin. These visits and any affection she might extend to that land might be viewed by some as exhibiting double loyalties. But if she became a citizen of her new country and felt loyalty towards it and yet sought a connection with her past, she would not be deemed to be deviant.

Canada as a country of immigrants, and Ontario as a province to which many if not most immigrants come, are particularly aware and sensitive to the immigrants' yearnings for their roots and identity. Indeed, governmentally sponsored programs assist in maintaining cultural and linguistic connections with countries of origin.

Governments need to be equally sensitive to adoptees' needs for genealogical roots and the provision of facts to replace fantasies. As much information as possible is needed by adoptees (and adoptive parents) to help them accurately create the adoptee's history of origin. Such information (all non-identifying) should include kinship history; medical information; cultural, ethnic and religious origins; birth parents' personal and family history; and the adoptee's circumstances of birth (including the time and place of birth for those with astrological leanings, and the circumstances of conception to explain the presence or absence of the birth father).

There is more limited research on birth parents' need for information about the children they relinquished for adoption. This research is supported, however, by submissions received by the Ministry and myself, testifying to the on-going concern that birth parents feel, over many years, for the health and happiness of their relinquished children.

Principles for disclosure

Having reviewed the major arguments for greater openness in disclosure of adoption information, as well as the changes in society that challenge the assumptions underlying restrictive legislation, I wish now to present some definitions and general principles which have formed the basis for the recommendations in this report.

The principles are directed at the "principals" in the "geometry" of adoption. Adoption has been variously described: as a triangle involving the adoptee, the birth parents and the adoptive parents; as a rectangle by adding the state as the fourth side; and as a circle to reflect its continuity of inescapable involvement.

Adoptees are adopted persons who by definition were almost all children under 18 years of age when adopted, but who in the normal course of development have become adults. "Adults" for this purpose may include both an adopted person who has attained the age of 18 and an adopted person aged 16 or 17 who has voluntarily withdrawn from the care and control of his or her adoptive parents (i.e., an emancipated youth). **The principle with respect to adult adoptees is that they should have the same rights, responsibilities and privileges of all other adults, including access to proof of their birth, to information about their origins, and participation in the decision to re-establish contact with their parents (birth parents).**

In keeping with this principle, **I recommend that the language of the sections of the Child and Family Services Act which pertain to adult adoptees as well as to adopted children be amended to refer to "adoptees" or "adopted persons", and to "adult adoptees" and "adopted children" as appropriate, rather than as now where they are all referred to as "adopted children." (R 3.1)**

Birth parents are individuals who are the biological parents of the adoptees. Though they relinquished or surrendered their child or had their child removed from their care, they may not have forgotten the child. They may continue to feel concern for their child or they may wish to reconsider their decision to never see their child, now adult, again. **The principle with respect to birth parents is that the renunciation of a right to parent their child at an earlier stage in their lives does not limit their right to reconsider their relationship with their adult child , at a later stage.**

Adoptive parents are individuals who chose to accept and raise a child born of other parents. **The principle with respect to adoptive parents is that their legal authority over the adoptee ceases when the child is considered an adult; i.e., at 18, or 16 if the youth is emancipated.** Though adoptive parents and the adoptee may or will continue to have a parent-son/daughter relationship, the parenting is by choice not by an authority, and the adoptee's response is by choice and not because of legal dependency, as is the case in any parent/child relationship.

Birth siblings and grandparents of the adoptee may not qualify as full principals to adoption, but they are much more than accessories before and after the fact of birth and adoption. They may be indirectly referred to in identifying information and described in non-identifying information. **Adult birth siblings and grandparents of the adoptee have an interest in information about the adoptee and that interest should be respected.**

Information about adoption is neutral with respect to the facts it contains. The historical facts about adoption may be interpreted or given shades of meanings and these may not be neutral. **The first principle with respect to the facts surrounding an individual's adoption is that those facts belong to that person regardless of where and how they are safeguarded.** Facts about adoption should be restored to a person if they had been removed or hidden, regardless of what interpretation may be made concerning those facts.

Adoption facts that refer to one person may also refer directly to another person. Adoption facts may be interpreted as harmful if they become publicly known or one of those to whom the facts refer uses those facts for a harmful purpose. There is virtually no evidence of such information being used for harmful purposes, however, in countries with more open disclosure. Conversely facts may be beneficial to one or several of those to whom the facts refer if such facts are known. **The second principle with respect to adoption facts is that on balance, and because the risks of revealing adoption facts to those to whom they refer have not been demonstrated to be harmful, and because the benefits appear to be substantial when the facts are known, any adult to whom the facts of adoption refer directly should have access to those facts. In the case of a minor adoptee, the facts are to be held in trust by the adoptive parents and a legislated authority until such time as the adopted child becomes an adult.**

Trend toward greater disclosure

Since the nineteen-fifties, changes in law and interpretation by the courts have generally resulted in broader provisions for the disclosure of non-identifying adoption information, and more recently, for release of identifying information as well. Building on the disclosure experience of Scotland, Israel, Finland, Sweden and England, many jurisdictions are examining their strict non-disclosure provisions with a view to some modification. New Zealand has changed its legislation within the last few months to permit full disclosure to adult adoptees. In the United States some seventeen states have made changes to their disclosure laws in the last three years. There have already been similar changes in law in Alberta, Manitoba, and New Brunswick; revisions in law are currently being considered in British Columbia and Nova Scotia. With the notable exception of Ontario, where the Child and Family Services Act has made disclosure of even non-identifying information more stringent than previously, the direction seems to be toward a liberalization of the legal permission to provide information related to an adoption.

There is one notable difference between the six countries cited above for their liberal disclosure laws and countries such as Canada and the United States where the laws are varied from one province or state to another. Because federal systems of government require each province or state to legislate for its own citizens in certain areas, there may be extreme unevenness in certain rights accorded any class of citizen within the same country. In the United States there has been as strong an effect in holding back changes in adoption disclosure law because some states have not seen fit to change, as there has been a leadership effect by some states providing a more liberalizing example. (71)

Provinces in Canada protect their rights in the social sector. These rights were granted to the provinces in the British North America Act of 1867 and were largely renewed in the Canadian Constitution of 1982, subject to the Charter of Rights and Freedoms. The Charter extends rights to all Canadians regardless of gender, age, race, colour, ethnicity, national origin, religious persuasion, or mental or physical disability. Although it is not specified, there appears to be the distinct possibility that other grounds for non-discrimination not yet named, such as being an adoptee, may also be protected by Section 15 of the Charter. (29)(37)(56)

Provinces had the opportunity between 1982 and April 1985 when the Charter was proclaimed, to amend their laws to come into conformity with the Charter, or to claim that they wish to declare their laws to operate notwithstanding certain provisions of the Charter. Generally, provinces did not choose to use the "notwithstanding" clause, although they have also been slow in revising their statutes. Ontario has yet to bring all of its statutes into conformity with the Charter. (47)

Adoption disclosure laws differ among the provinces. Each province's law generally refers only to those adoptions completed in that particular jurisdiction, although adoptees, adoptive parents, or birth parents may have left their original province to take up residence elsewhere in Canada. The new Constitution protects certain mobility rights of Canadians but has not yet considered the effect of mobility on disclosure. Adoptees, as a class of persons who did not choose their condition and who have no possibility of reversing their adoptive status, may be likely candidates to test the Charter and try to establish their standing as a group in need of protection from discrimination. Disclosure laws in each province discriminate against adoptees by preventing them from having information about themselves which is readily available to all others in that province. (29) Furthermore, disclosure laws vary among the provinces and discriminate against adoptees in one province compared with another. Restrictive disclosure laws in one province may be open to challenge under Section 1 of the Charter, as setting unreasonable limits on rights that are granted in other jurisdictions in Canada. Agreement among the provinces to have a uniform disclosure law would reduce the complaint of uneven justice, but the question of reasonable access to identifying information will still have to be addressed if Charter challenges are to be avoided.

The possibility of achieving comparability or uniformity across Canada has been achieved through recent changes in adoption disclosure laws in many of the provinces. Alberta, Manitoba, New Brunswick, and Ontario have Adoption Disclosure Registers ranging from passive to active in their assistance in accessing identifying information. One province, Saskatchewan, has an effective Register but no supportive legislation that mandates a particular way in which the Register should function. Three provinces, Nova Scotia, Prince Edward Island, and British Columbia, have draft laws and position papers that may lead to legislative changes permitting much more open disclosure of identifying information. The Northwest Territories and Yukon have disclosure provisions but no Register. Quebec's disclosure restrictions may require special efforts to reconcile with other provinces.

Disclosure of non-identifying information would seem to be the least problematic. It is currently provided on request in all Canadian jurisdictions except Ontario (by law in 3 provinces, by policy/practice elsewhere) and by law in at least 30 American states. Prior to the decision in the Ferguson case, non-identifying information was also provided in Ontario. Since then practice across the province has varied with respect to giving non-identifying information to adult adoptees, but all adoption agencies still provide it prior to an adoption order. There is an overwhelming agreement by all parties to adoption that non-identifying information should be available to adoptive parents, adoptees, and birth parents, both pre - and post - adoption. Those who have submitted briefs and recommendations are virtually unanimous that this information should be available (with only three or four exceptions out of thousands). There seems also to be agreement by legislators that legislation should provide for full disclosure of non-identifying information at least.

There is considerably less agreement regarding the disclosure of identifying information, as witnessed by Ontario court decisions over the past twelve years. The expression of this disagreement has been seen most clearly in those decisions interpreting existing legislative requirements. Bound by the adoption provisions of the Child Welfare Act, the courts have jealously protected identifying information in sealed records. If disclosures were to be undertaken, they were permitted only under very strict safeguards for the protection of all those who were participants in the adoption process. The courts, however, have not been uniformly restrictive; they have opened the possibility for alternatives, either through different interpretations in new cases that are presented on their merits or by changes in the legislation.

In 1974 an application was brought by a natural parent to have the adopting parents named as parties to a trial involving consent to adoption. (Re Nichols, 1974 18 R.F.L. 127 (Ont. C.A.). The application was denied by the court on the grounds that the scheme of the 1970 Child Welfare Act was to preserve the anonymity of the adopting parents, and that it would take compelling circumstances to have the court sweep away that secrecy. His Honour Judge Killeen in the Ferguson case referred to this case and agreed that anonymity of adopting parents and confidentiality were two vital factors underlying the scheme of adoption under the Child Welfare Act. (29)

In Lyttle v. the Children's Aid Society of Metropolitan Toronto (1976) 24 R.F.L. 134 (Ont. High Court), the Court ruled against Mr. Lyttle's claim for custody and access to his natural son, but did recognize his birth parent relationship and the fact that an adopted child may have curiosity about his or her origins. The court offered the opinion that no general rule could be laid down but that the child's concern about his/her origin should be considered in each case on its own merits. There was no attempt to obliterate the pre-adoption history of the child in any consideration by the Court. (29)

Mr. Justice Mackinnon, in the majority decision of the case of C. G. W. v. M. J. et al (1981) 34 Ontario Reports (2d) 44 (Ont. Supreme Court), concluded that the overall effect of the provisions of the Child Welfare Act was to preserve anonymity and confidentiality in adoption, and denied the birth parent access to her child who had been adopted. The court did acknowledge, however, that a relationship between natural parent and child might exist before an adoption and that this might be continued after the adoption under certain circumstances, despite the secrecy provisions. In this particular case, however, such a relationship did not exist. Although the issue in this case was access, the result would have been disclosure. (29)

The recent case of D.I.S. and C.D.S. v. M.F.C. and N.C. (unreported decision of Local Judge S.R. Kurisko of the District Court of Thunder Bay, 1985) concerned paternal grandparents who sought access to their son's natural child who had been adopted by its natural mother and a stepfather. In ordering a trial on the access issue, Judge Kurisko stated that the natural mother's reluctance to allow access by the grandparents was not in the best interests of the child. He also stated that a child, and particularly an adolescent, has a natural desire to explore his or her roots. Although Judge Killeen ruled against the consideration of best interests in the Ferguson case, in this latest case involving access, the best interest test was introduced. (29)

The four cases described above identify the court's acceptance of anonymity and confidentiality as vital factors in adoption law , while at the same time opening the possibility for disclosure based on a need to know one's origins, concern for the best interests of the child, or in recognition of a prior relationship between birth parent and relinquished child.

In Chapter 1 of this report note was made of the background to the controversy over disclosure and to the events that precipitated the need for a study of changes in disclosure provisions. The case of Mrs. Ferguson and the judgment of His Honour Judge Killeen (Re Ferguson and Director of Child Welfare (1983) 142 D.L.R. (3d) at p. 609 (Ont. Co. Ct.), are crucial elements in bringing the issue into focus. Mrs. Ferguson sought the identifying information contained in her adoption file in order to have knowledge of her roots. Although there was little information available in addition to what she already knew, she was denied access to it.

In denying her application Judge Killeen raised several issues which could only be resolved by rewriting Sections 80 and 81 of the 1978 Child Welfare Act. He could find no authority in the Act for the Ministry's discretionary guidelines on the release of information. He stated that the rules governing release appeared arbitrary, and that nowhere in the entire Child Welfare Act was the Director of Child Welfare given authority to release information held in Ministry files. Judge Killeen ruled that a judge did not have that authority either. The claims that Mrs. Ferguson's best interests as an adult adoptee were like the best interests of a child, and that these interests predominated over parents' privacy and confidentiality, were denied. The judge emphasized the confidentiality provisions of the Act , the "as-if-born-to" clause, and the "exceptional circumstances" condition as overriding best interests.

Judge Killeen expressed the view that the 1978 Child Welfare Act was ambiguous and that, in amending the legislation, the Government had failed to address a number of issues, some of which had been referred to it by the Committee on Record Disclosure to Adoptees in 1976. I quote from the court record:

> The Committee Report of 1976 represented an incisive and comprehensive effort to deal with a difficult subject. Unfortunately much of the central strength of the report was lost in the legislative process. The difficulty with the legislative response is that it failed to do three things which were essential to success of the recommendations:
>
> First, Section 81 failed to differentiate between identifying and non-identifying data;
>
> Second, it failed to give an active stress to the Registry itself by mandating the communication of full information about the Registry to prospective members of the adoption triangle and the public;
>
> Third, it failed to recast Section 80 in a manner which would qualify the powers of disclosure of the Director and the judiciary mentioned in that section.

Judge Killeen intended, in 1981, to encourage the Ontario Legislature to try again. Bill 77, rather than attempting to remedy the problem as outlined in the Committee Report of 1976 and by Judge Killeen, further exacerbated the difficulties by including non-identifying information in the restrictive wording of Section 157. It is these problems, old and new, that my Terms of Reference address.

The following chapters of the report present my recommendations with respect to the disclosure of both non-identifying and identifying information. These recommendations involve both changes to the laws of Ontario and to the practices of adoption agencies and government departments. Chapter 4 deals with disclosure of non-identifying information, Chapter 5 with identifying information, and Chapter 6 with the roles and counselling procedures of the Voluntary Disclosure Register and adoption agencies.

Chapter 4

DISCLOSURE OF NON-IDENTIFYING INFORMATION

As stated in the previous chapter, there is widespread and general agreement that non-identifying information should be available to the participants in an adoption, both before the adoption placement and after the adoption order. In this chapter I make recommendations about the general definition and specific content of non-identifying information; about who should have access to this information; under what circumstances it should be released and through what procedures; and about where and how it should be kept and updated.

Definition

I recommend that any information on the background, health, and circumstances of the birth parents and other birth relatives of the adoptee or child being placed for adoption, together with information on the health and development of the adoptee as he or she is growing up in the adoptive family, should be considered as non-identifying information, provided it does not disclose the identity or location of the birth parents or birth relatives or the identity or location of the adoptive family or the adoptee. (R 4.1)

Content for adoptive parents and adoptees

Because of the adoptee's need for genealogical roots and medical history, and the need for facts rather than fantasies, **I recommend that as much non-identifying information as possible be readily provided to adult adoptees, adoptive parents, and minor adoptees with the consent of their adoptive parents, including the following (to the extent the information is available) (R 4.2):**

1. The adoptee:

- birth details including date, time, weight, place, name of hospital (Note that hospitals will not release birth parents' names or the name of the attending physician.)
- care prior to adoption placement (for example, in foster care, living with relative)
- developmental progress (for example, health, personality traits of child, personal anecdotes or comments by meaningful people)
- date of adoption placement.

2. Birth parents:

- birth year and/or age at time of birth of adoptee
- physical description including genetically related characteristics
- health history including genetic characteristics and reference to the parents of the birth parents for genetic continuity; illness, disability, hospitalization history, without reference to the attending physicians or the name of the hospital in which the stay occurred
- ethnic, racial, national origin including the origins of the parents of the birth parents. Ethnicity should include the region of the country of origin, (for example, Northern Italy, Southern France, Scottish Highlands) and the generation of immigration of Canada (i.e., first, second or fifth generation)
- religious identification and affiliation in broad classification terms (for example, Protestant, Roman Catholic, Hindu, Jewish)
- general occupational group of the birth parents respectively (for example, craft, trade, profession, clerical)
- general economic status (very low, low, middle, high)
- educational level attained but without designation of the school or post-secondary institution or the particulars of a degree or special training leading to a certificate or diploma
- provincial location at time of relinquishment in Canada
- general interests (for example, hobbies, special skills, athletic or recreational activities).

3. Family of birth parents (birth parents' siblings and parents):

- as above to amplify data where these are different
- family's knowledge of and attitudes towards birth parent's pregnancy and adoptee's birth and relinquishment (i.e., how widely known and measure of support).

4. Siblings of adoptee:

- siblings and family prior to birth of adoptee, particularly with reference to age at time of adoptee's birth, health history, and knowledge of adoptee.

5. Relinquishing circumstances:

- relationship between birth parents (for example, how they met, length of relationship, feelings for each other)

- stated explanation for relinquishment (for example, physical health, mental health, economic status, age, marital status)
- birth mother's, birth father's and other birth relatives' involvement in the decision-making process and the feelings of each about the relinquishment or the child's surrender into protective care.

I recommend that information related to special situations such as rape, incest, physical or sexual abuse, or other violence should be disclosed with sensitivity and discretion by an appropriately trained counsellor. It should be shared with adult adoptees, with adoptive parents prior to adoption, and subsequently with minor adoptees with the consent of their adoptive parents. (R 4.3) Such information is important in helping to explain to adoptees why they were relinquished by their birth parent(s) for adoption or why they were taken into protective care by a children's aid society. Depending on the age of the adoptee at the time of relinquishment or surrender, it is quite possible that he or she has vague or vivid memories of these circumstances. It is vital that adoptive parents and adoptees be given opportunities over time to understand how these events may have affected the adoptee's life.

Information for birth parents and birth relatives

Because of birth parents' on-going concern for the health and happiness of their children relinquished for adoption, **I recommend that available non-identifying information on the health and development of the adopted child be provided to birth parents on an as requested basis. (R 4.4)**

Because birth siblings and birth grandparents of the adoptee may also have on-going concern for the health and happiness of the adoptee, **I recommend that available non-identifying information on the health and development of the adopted child be provided to adult siblings and to grandparents of the adoptee on request. (R 4.5)**

Access to non-identifying information

I recommend that non-identifying information be made available to the following persons on request, under the consent conditions indicated below:

- **to adoptive parents prior to an adoption placement and after an adoption order (without consent)**
- **to adoptees under age 18 with consent of the adoptive parents (except as noted below for emancipated 16 or 17 year-old adoptees)**

- to adult adoptees (that is to those who have attained 18 years or those aged 16 or 17 who have voluntarily withdrawn from adoptive parental care and control), without consent
- to birth parents, adult birth siblings and birth grandparents of the adoptee (without consent)
- to the adoptee's family physician and/or attending physicians with the consent of the adult adoptee and in the case of a minor adoptee, the consent of the adoptive parents. (R 4.6)

I also recommend that where access to non-identifying medical information is required in a situation threatening the life or health of a minor adoptee, and the consent of the adoptive parents is withheld or unavailable, a Director appointed by the Minister should have discretion to release the appropriate information to the minor adoptee's physician(s). (R 4.7)

Procedures

I recommend that societies, licensees, and a Director appointed by the Minister be authorized in the Child and Family Services Act to release non-identifying information to persons eligible to receive the information as above. (R 4.8)

Because even non-identifying information may come as a surprise or shock to the person seeking it, and may be upsetting to the individual, I recommend that disclosure of non-identifying information to any person entitled to receive it should be accompanied by interpretive counselling from a qualified person. (R 4.9)

Because the individual eligible to receive the information is entitled to all the facts surrounding the adoption, I recommend that non-identifying information be transmitted as the record stands, without editing, amendment, or abridgement of the data, but with sensitivity and discretion as to the timing and manner of the disclosure of information related to rape, incest, physical or sexual assault, or other violence. (R 4.10)

I also recommend that as much non-identifying information as possible be given to adoptive parents, in written form, prior to completion of the adoption order. (R. 4.11)

Updating of non-identifying information

It is important that information available to adoptive parents, adoptees, birth parents and relatives be as up-to-date as possible. I recommend, therefore, that birth parents and adoptive parents be encouraged, but not required, to update the information contained in the files of the relevant

society, licensee or the Ministry on a regular basis, and particularly when there is any significant change in health or medical information. Societies, licensees or the Ministry are expected, in turn, to inform adoptive parents, adult adoptees, birth parents, and adult siblings of these changes as appropriate. (R 4.12)

Location and security of non-identifying information

At the present time non-identifying information related to an adoption may be contained in the records of a society, a licensee, and/or the central files of the Ministry of Community and Social Services. In order to maintain the confidentiality of these records **I recommend that societies, licensees, and the Ministry be required to keep non-identifying information related to an adoption in a secure place which is not generally accessible to the public or to unauthorized staff. (R 4.13)**

Because private adoption licensees may not wish to be involved in on-going post-adoption counselling -- a process which may continue over many years as adult adoptees, adoptive parents or birth parents seek additional information -- **I recommend that following closure of an adoption order, licensees be required to forward copies of all information, identifying and non-identifying, to the Ministry, and that the adoptive parents, adult adoptee, and birth parents be informed of this by the licensee and referred to the Disclosure Register for further information. Any updated information which a licensee receives should also be forwarded to the Ministry on an annual basis, or more frequently in the case of critical medical information. (R 4.14)**

Chapter 5

DISCLOSURE OF IDENTIFYING INFORMATION

As suggested in Chapter 3, in recent years there has been a mounting trend in many parts of the world toward more openness in the disclosure of identifying information to adult adoptees and others. Despite this, however, most jurisdictions still go to considerable efforts to protect birth parents, adoptees, and adoptive families from uninvited intrusion into their lives. Many jurisdictions in North America, therefore, have developed fairly elaborate mechanisms for the release of identifying information, most often through a voluntary disclosure registry. Other countries such as England and New Zealand release the original birth certificate on request, but accompanied by mandatory interpretive counselling.

Several observers have detailed the decision in England in 1975 to change the law to release the original birth certificate to adult adoptees. The research of McWhinnie, Triseliotis, and Rowe persuaded the majority in Parliament that little or no harm had resulted in Scotland where birth certificates had been released since 1930. (41)(63)(64)(116) In fact there were recognized benefits to adoptees who had chosen to receive their original birth certificate, because it gave them certain evidence of their genealogical roots. To allay the concern by some that the decision might be harmful, counselling was made a requirement for any applicant who was adopted before 1975. The expectation was that the counselling would reduce or minimize the risks associated with disclosure. (127) Since then there has been an extended follow-up study in England which strengthens the determination of the original decision. The benefits of receiving counselling together with the original birth certificate have been verified. (12)(27)(28)

Birth certificates in Ontario

It is curious how much feeling, energy and administrative turmoil is caused here when the topic of disclosure of the original birth certificate arises. It may help to explain what information is contained in the birth records of adoptees kept by the Registrar General of Ontario.

a) Original statement of live birth: When any infant is born in Ontario, the birth mother is required to file a form called a statement of live birth. The precise data requested have changed somewhat over the years but have generally included the following: the date, time, and place of birth of the infant; the sex and given names of the infant; the name of the birth mother and her age at the time of the birth; the name of the birth father or of the mother's husband if she was married at the time of the birth (or the father's name may be left blank); the mailing address of the birth mother at the time of birth (or that may be left blank); the length of the pregnancy; other births to the mother, including live births, still-births and multiple births; the name of the attending physician. A certified copy of this statement of live birth comprises the original (long-form) birth certificate of the child. It is generally available only on special and written request, and never to an adoptee.

b) Short-form birth certificate: When any person born in Ontario other than an adoptee applies for a birth certificate, the Registrar General issues a "short-form" certificate (plasticized card) which provides the applicant's name, date and place of birth, sex, and registration date and number. This information is a "certified extract" from the original birth registration information contained in the statement of live birth.

c) Adoptee's amended birth certificate: When an adoption order is granted, the Vital Statistics Act provides that the adoptee's original birth records retained by the Registrar General may be set aside and replaced by an amended record to show the adoptive parents as if they were the birth parents. Since the 1960's, adoptive parents have been required to complete and sign an amended "statement of live birth", substituting their names and other information for the name(s) etc. of the birth parent(s). Many adoptive parents have complained that this practice is tantamount to fraud.

Although it is clearly beyond my Terms of Reference, I **recommend that the Government of Ontario abandon this latter practice and replace it by having the adoptive parents sign an affadavit that they have legally adopted the child and are applying to have the adopted child's name and record changed.(R 5.1)**

When an adopted person applies for a birth certificate, a short-form certificate in the amended (adopted) name is issued. The long form statement of live birth is never released except in special circumstances and then only in its amended form for those adopted since the 1960's.

Any individual except an adoptee receives his or her original birth certificate because there is only an original. The adoptee has the dubious privilege of having two birth-certificates: the original, to which he currently has no access; and the amended certificate which hides his birth name.

The explanation of why the legislature and courts have protected the original birth certificate has been discussed elsewhere in this report. The most obvious reason, of course, is to protect the confidentiality of the birth parents, especially the unmarried birth mother. Arguments for why this protection should be continued have also been examined and challenged. Why this should not continue is argued below.

The adult adoptee, as one of a class of individuals, should not be discriminated against because of an irreversible fact in his or her birth. While the Charter of Rights has just begun to be explored for remedying the discrepancy of unequal treatment between adoptees and others, the denial of access to birth records is a very likely area for challenge if the Ontario

Legislature fails to provide equal treatment. As discussed earlier, although adoptees as such are not enumerated among those for whom protection is sought in Section 15 of the Charter, there is sufficient interpretation of the inclusion of other groups not named that adoptees should not experience too much difficulty in obtaining standing as a group that requires protection from discrimination.

The original birth certificate provides one small set of facts that are incontrovertible and that belong to the adult adoptee as a true record of his past. The adoptee may choose to do nothing more with this information, or he may wish to seek additional information. The choice should lie with the adult adoptee not with the Government or others as to what he wishes to do with the barest facts of his life. The adoptee who has attained adult status should be accorded the same benefits and responsibilities as other adults, including access to his original statement of live birth should he desire it. He should not be required to have "parental consent" to access this information.

Because the information contained in the original birth certificate has been withheld for at least the childhood period of the adoptee, its revelation may be a source of upset. Consequently special procedures are required for its release. Not all adoptees have been told they were adopted, even though children's aid societies for the past twenty years have counselled adoptive parents to tell their adopted children early, and eventually fully, that they have been adopted. Some adoptees have been told stories to make the adoption palatable and understandable. These stories may have had the kernel of truth encased in a shell of fiction. Many adoptees have been told all that was known by their adoptive parents, but that knowledge may have been very little, especially if the adoption was arranged thirty or forty years ago. Those who arranged private adoptions were not known to keep elaborate records or to convey them with any completeness to the adoptive family. Children's aid societies have indicated that early adoption records were empty of important, even non-identifying, information.

Definition and content

Before giving my recommendations on who should have access to identifying information in Ontario and how it should be released, it is important to define what I mean by identifying information in the context of this report.

Identifying information may be defined generally as any information that reveals or is likely to reveal the names or location of the birth parents, birth siblings, or other birth relatives of the adoptee, and the names or location of the adoptee and/or adoptive family.

Specifically, **I recommend that identifying information be defined as including three categories of information as described below which may be contained in adoption files of the Ministry, societies and licensees; in court records; and in records of the Registrar General: (R 5.2)**

Type A. Information which may disclose the original last name of the adoptee but not the actual identity of the birth parents; i.e.,

- the adoption order (which may or may not give the adoptee's birth surname depending on the period of the adoption);
- the short-form birth certificate in the original birth surname of the adoptee.

Type B. Information which may disclose the name(s) and address(es) of birth parent(s) filed at the time of the adoptee's birth; i.e.,

- the original long-form birth certificate (statement of live birth) of the adoptee.

Type C. Any other information which reveals or is likely to reveal the identity or location(s) of the various participants to an adoption; i.e.,

1. Identifying information related to birth parents, including:
   - names of schools, religious or other institutions, membership groups, and specific occupations or employers with which the birth parents were affiliated;
   - names of physicians or other professionals involved in the relinquishment and/or placement of the adoptee, including those involved in private adoption before the licensing of adoption agencies and individuals (apart from the statement of live birth);
2. Identifying information related to the adoptee and/or adoptive parents, including:
   - name and address(es) of the adoptee (child or adult);
   - names and addresses of the adoptive parents;
   - names and addresses of foster parents or other caregivers with whom the adoptee may have been placed prior to the adoption order.
3. Identifying information related to birth relatives of the adoptee, including:
   - names and addresses of the parents and siblings of the birth parents (birth grandparents, aunts and uncles of the adoptee);
   - names and addresses of birth siblings of the adoptee, including full and half-siblings. (R 5.2)

Access to identifying information and consent requirements

At present, Section 158 of the Child and Family Services Act permits disclosure of identifying information through the Voluntary Disclosure Register to adult adoptees and birth parents with the written consent of all three parties to an adoption: the adult adoptee, the birth parent, and the adoptive parents.

I recommend that the Child and Family Services Act be amended to permit the release of identifying information through the Disclosure Register, and accompanied by mandatory interpretive counselling, as follows:

1. **To adult adoptees (aged 18 or over): Type A, B and C information on request, but released in stages with interpretive counselling, beginning with release of the adoption order and the original long-form birth certificate (R 5.3)**

   The consent of adoptive parents would not be required, nor would the consent of the person(s) whose identity was to be disclosed. My view is that adult adoptees are entitled to receive this information about themselves and their birth relatives. It should be noted that the identifying information in the adoptee's file would not give current names and addresses unless those have remained unchanged since the time of the adoption order or have been voluntarily updated by the birth parents or birth relatives. Furthermore, the seeking of contact or reunion would require the consent of the persons to be contacted.

2. **To birth parents, adult birth siblings and birth grandparents of adult adoptees: Type C information about the adult adoptee would be released with the consent of the adult adoptee. (R 5.4)**

   The consent of the adoptive parents would not be required, but the adoptee (who had no choice in his or her relinquishment or adoption) would retain the right to refuse to disclose information that could lead to intrusion into his or her life. As an adult, the adoptee may live independently or with his/her adoptive parents. In either case, however, the adult status of the adoptee should be the determining factor in his or her consent to disclose, not the disclosure risk to the adoptive parents.

3. **To adoptive parents and to minor adoptees with consent of their adoptive parents:**

   a) **Type A information only, on request (i.e., the adoption order and short-form birth certificate in original name.) (R 5.5)** Minor adoptees would require the consent of their adoptive parents unless they were aged 16 or over and had withdrawn from the care and control of the adoptive parents. Note that Bill 77 already provides for release of the adoption order to adoptive parents, but this recommendation would extend that permission to minor adoptees (with adoptive parent consent as noted) as well. Since some adoption orders do not give the birth surname of the adoptee, access to the short-form original birth certificate should also be permitted without consent of the birth parents.

b) **Type B and C information only with the consent of the person(s) whose identity would be revealed. (R 5.6)**

In summary, these recommendations provide open access to identifying information to adult adoptees. Adopted children and adoptive parents are protected in that birth parents may not have access to identifying information about the child or his/her adoptive family until the adoptee is an adult and gives permission to the release of information about himself/herself. Birth parents are safeguarded, if they so choose, from having identifying information (apart from the birth surname) disclosed to their child who is a minor or to adoptive parents. Adult adoptees, birth parents and birth relatives, and adoptive parents of minor adoptees are all protected from undesired intrusion into their lives through the provision of mandatory counselling to the person seeking information and through the requirement for consent to contact or reunion. These aspects are discussed in greater depth in the next part of this chapter and in Chapter 6.

Procedures for release of identifying information and seeking possible contact/reunion

As indicated above, **I recommend that identifying information be released through the Disclosure Register and accompanied by appropriate interpretive counselling provided either by the Register or by the local society or other approved agency. (R 5.7)** The nature and extent of this counselling is discussed in some detail in the next chapter, along with a consideration of the role of the Register and children's aid societies in providing this counselling.

With respect to the disclosure of both identifying and non-identifying information, **I recommend that in exceptional circumstances to be defined in Regulation, such as where the applicant presents a clear danger to himself or others, the Act should provide discretionary authority to a society, licensee, or Ministry Director to delay provision of the information to which the applicant is otherwise entitled. (R 5.8) It is also recommended that refusal to provide information or to delay its provision be appealable first to a Director appointed by the Minister, and then to the courts. The Director should appoint a hearing officer to determine the disposition of the complaint. If the complainant remains unsatisfied with the results of the hearing, the Ministry or agency may be taken to court. (R 5.9)**

The current name of the Register (Voluntary Disclosure Register) fails to identify to the public that it is concerned with adoption. As well, the term "Voluntary" will be somewhat misleading if my recommendation to release identifying information to adult adoptees on request is accepted. I **recommend, therefore, that the name of the Register be changed to Adoption Disclosure Register. (R 5.10)**

a) Mechanisms for release of original birth certificates

In considering procedures for the release of identifying information, it is important to recognize that persons may request a copy of their adoption order or original birth certificate without necessarily wanting further information or contact with birth parents/relatives. Consequently the recommendation to provide the original long-form birth certificate on request to adult adoptees recognizes the limited amount of information on that certificate and that it is unlikely on its own to lead to contact or reunion.

I recommend that adoptees who know they are adopted be permitted to request receipt of their original birth certificate from either the children's aid society in their local community or from the Adoption Disclosure Register, but that all requests should flow through the Adoption Disclosure Register to the Registrar General. (R 5.11)

I also recommend that the Vital Statistics Act be amended as required to permit the Registrar General to release the original long-form birth certificate of an adult adoptee and the short-form certificate of a minor adoptee to the Adoption Disclosure Register, which will arrange for counselling along with the transfer of the certificate to the eligible adoptee. (R 5.12) I would suggest that children's aid societies or other approved agencies be asked by the Adoption Disclosure Register to assist with the provision of counselling and transmittal of the certificate.

I recommend that adult adoptees who apply directly to the Registrar General for a birth certificate (in their adopted name), either in person or by mail, be informed discreetly by a specially designated staff member of the existence of an earlier birth registration certificate (probably in another name) and be referred to the Adoption Disclosure Register if the original long-form birth certificate is desired. (R 5.13)

The Registrar General's records in the adoptee's adopted name are coded to indicate that the registrant is adopted and that an original statement of live birth is also on file. That information should be conveyed to the applicant with tact and understanding, in person or by mail, indicating that if desired, a certified copy of the original statement of live birth could be obtained through the Adoption Disclosure Register of the Ministry of Community & Social Services.

The interview by the Registrar General's staff may be brief but it should be carried out by staff members who have been instructed to recognize the shock, surprise, and possible upset that such a disclosure might cause. As the Register House clerk in Edinburgh expressed it, when the coded and altered certificate comes up, "that rings a bell, sir." The bell in this instance is the procedure set in place to immediately refer the applicant to a designated counsellor. Ontario should be no less stringent and concerned in its practices. (122)

b) Procedures for contact or reunion

While it is recommended that no one has the authority to prevent an adult adoptee from receiving identifying information, **I recommend that where contact or reunion is sought by an adult adoptee, the consent of the person(s) to be contacted by the adult adoptee is required. (R 5.14) Similarly, I recommend that where contact is sought be a birth parent, adult birth sibling, or birth grandparent of an adult adoptee, the consent of the adult adoptee is required before such contact can be made. (R 5.15)**

I recommend that the Adoption Disclosure Register be authorized in the Child and Family Services Act to release identifying information and to accept registration for consent to be contacted for possible reunion purposes, from adult adoptees; from birth parents, adult birth siblings and birth grandparents of adult adoptees; and from adoptive parents and minor adoptees with their adoptive parents' consent. (R 5.16) Birth parents, adult siblings, and grandparents, and adult adoptees who wish to be contacted should provide the Disclosure Register with up-to-date names, addresses, and telephone numbers as required. Those who do not wish to be contacted by another party to the adoption could also register this information with the Register.

Active Disclosure Register

Where a person who is eligible to register has not done so, and a request has been made for the release of identifying information which requires that person's consent or a request for possible contact or reunion has been made to the Register, **I recommend that the Adoption Disclosure Register shall undertake a reasonable and discreet search of up to nine (9) months for those not registered and act as an intermediary between the person requesting information or contact and the person(s) from whom it is sought. (R 5.17) I also recommend that the Register be authorized to enlist the assistance of a society, or other approved agency as appropriate, in conducting the search and providing intermediary counselling services. (R 5.18)**

There may be instances where after a search as outlined above has been completed, the person whose consent is required for release of identifying information has not been located and no information on their whereabouts is available. **I recommend that in such circumstances, particularly with a request for information that involves risk to health or safety of the requesting individual, the Director responsible for the Adoption Disclosure Register be authorized in the Child and Family Services Act to release identifying information at his/her discretion. (R 5.19)** I would point out that failure to locate someone would not be a problem in the release of identifying information to an adult adoptee since I have recommended that no consents are required for such release anyway.

Location and security of identifying information

The courts will have a record of some of the information listed on p. 42, filed with the adoption order. Hospitals will have a record of the birth mother's name and the details of the birth. Adoption agencies including licensees and societies have much of the above information in their files. **I recommend that in future a copy of all such identifying information be placed in the records of the Adoption Disclosure Register. (R 5.20) I also recommend that children's aid societies retain indefinitely a copy of identifying information related to any adoption placement they have made. (R 5.21)** This will ensure that, in the future at least, the centralized provincial records of the Adoption Disclosure Register contain a duplicate of all the identifying information relating to an adoption. It also ensures that societies will have the relevant information to enable them to assist the Register with the disclosure of identifying information and the required counselling.

With respect to the security of identifying information, **I recommend that any and all identifying information held by the Register, a society, or a licensee be kept in a secure place which is not accessible to the public or to unauthorized personnel. (R 5.22)**

Retroactivity

In my Terms of Reference I was specifically asked to address the question of whether any or all of my recommendations should apply to adoptions that have already occurred or whether they should apply only to adoptions that might take place after the recommendations might be implemented.

Since the first Adoption Acts of 1921 and 1927 there have been over 200,000 adoptions in Ontario. It is estimated that about half of those adopted would now be 18 years of age or over. It is these people whose rights to information have been denied and who have petitioned for changes to Bill 77 to permit disclosure. (See Appendix II for a table of estimated numbers of adoptions by decade and by type of adoption; i.e., society, private/licensee, and step-parent/relative.)

To not have the recommended changes apply to past adoptions would render my whole review meaningless, in that the changes are intended to redress the limitations of past legislation. **I therefore recommend that the recommendations on disclosure and access to records apply to all adoptees and other adoption principals who have been affected by Ontario's adoption and child welfare legislation since 1921. (R 5.23)**

Since it was the Provincial Government which set up the terms of non-disclosure in its legislation, and all parties to an adoption were bound by the Province's decision, clearly a reversal of that decision is within the Province's authority. A state may certainly change its rules of practice through its legislation. Examples to be noted are changes that were brought about through Human Rights legislation, Children's Law Reform, and Family Law Reform. All have provided benefits and rights where none existed before. Health and Workers' Compensation legislation recognize injuries incurred in the past that require remedies today. Rights that are now perceived to have been violated, although they once were not considered so, may now be restored; violations may now be prosecuted or the prior permission to violate may be voided. (120)

Changes to adoption laws are no different from the kinds of changes to legislation described above. The law has always permitted the opening of sealed adoption records where a court has so ordered or where a person authorized by the Minister has directed. This has rarely happened, however. Over the years, and particularly in the last ten to twenty years, societal attitudes to disclosure have changed. The recommended changes to the law would simply reflect the increased acceptance of greater openness in adoption.

The requirement of mandatory conselling for all those to whom information is to be disclosed, together with the offer of counselling to all persons likely to be affected by such disclosure, should allay any possible fears about the effects of retroactivity. The provision of counselling is discussed more fully in the following chapter.

Chapter 6

MANDATORY COUNSELLING AND THE ROLE OF THE ADOPTION DISCLOSURE REGISTER

Counselling

The recommendation that counselling be mandatory at each stage of information disclosure needs some explanation. Practice often precedes policy. Counselling, at least in the pre-adoption stage, is common practice in most adoption agencies. Adoption through children's aid societies and licensees always entails several interviews, which include pre-adoption counselling of the adoptive parents, the relinquishing parents, and perhaps the child who is not an infant. The relinquishing, transplanting, and absorbing of a child is a sensitive and critical undertaking for all involved. Strong emotions are aroused and should be expressed and managed with the assistance that counselling provides. Suggestions and techniques are made through counselling on how and when the adoptive parents will tell their child about the adoption and disclose whatever information they have.

When the adoptee becomes an adult, the information that he/she has received may have been vague, negligible, or merely insufficient for the adoptee's need to know his/her origins. This is particularly the case for those who were adopted before the 1960's. The process of acquiring, assimilating, and acting on new information about one's origins can prove exhilarating but also frightening, anxiety provoking, or unsettling. Counselling helps convey the historical context of the decision that was made by birth parents to relinquish the child for adoption. If the child was a Crown ward, counselling offers some explanation and interpretation of the facts of protective care and why the adoptee's birth parents were not considered able to provide parenting but had to surrender the child to the society. Physical and other handicaps may have led to the child being placed for adoption, and these need the interpretation that counselling can provide.

Scotland has had a senior staff member assigned to counsel adoptees who seek their original birth certificate since at least 1960. England made counselling mandatory in the 1975 Children's Act: "It shall be the duty of the Registrar General and each local authority and approved adoption society to provide counselling for adopted persons who apply for information." England and Sweden stipulate the professional discipline of the disclosure counsellor as well as the expectation that he or she shall have had experience in all aspects of adoption. (13)(24)

The provision of counselling was inserted into the English legislation to allay the fears of members of parliament and others that natural birth parents' privacy would be invaded by angry or searching children they had given up for adoption. The counselling was not defined but by implication was intended to make adoptees aware of the past and the risks involved in seeking a reunion. Day and Leeding report on studies of the first 500 adoptees who were counselled in the early years of the legislation. (11)(12) Very few, in fact less than 3% of the first 500 who came forward to obtain their birth certificates, were insensitive to or unaware of their birth parents' situation. Haimes and Timms in a later study of counselling found a wide range of topics covered by counselling; all appropriate to the disclosure process but encompassing far more that the original legislation required or stipulated. (27)

Counselling is a means to convey information, some of it sensitive and needing context and interpretation; a process of developing trust between counsellor and applicant so that the sometimes painful emotional expressions of feeling will be accepted and understood. It provides a means of coping with tasks or solving problems, where the counsellor explores the positives and negatives of any course of action with the applicant and helps the applicant test, choose, and carry out decisions. It provides sensitive procedures for moving to next steps.

Haimes and Timms, Wiseman and Asquith describe the amount of professional judgment and discretion that is involved in counselling while staying within the boundaries of the legislative mandate. Each person who comes forward for information has an individual set of needs, wishes, feelings, and experiences. These must be revealed, understood, and responded to based on the circumstances. Counselling is not done by numbers or by the book. It is not a matter of fact alone, but matters of feeling, fact, and fantasy that require sensitivity and skill in their response.

The several steps in the counselling process may not proceed in a linear or orderly progression. Adoptees and others who seek non-identifying and identifying information have stages to go through -- from first request, to seeking more information, to considering contact, to establishing contact and possible reunion, to deciding to maintain contact or to discontinue and close off their past. Each stage has its problems or tasks and associated feelings. Each stage requires counselling by a skilled professional social worker trained in adoption services.

Present counselling services

Increasingly children's aid societies, and to a lesser extent the Voluntary Disclosure Register, have been expected to counsel adoptees, birth parents, adoptive parents, and siblings on a range of post-adoption questions. These include requests by adoptees for information about their origins or about medical and genetic information; requests by birth parents for information about the adoptees they relinquished; and requests by adoptive parents for assistance with post-adoption adjustment, particularly for the older and special needs children who are increasinly being placed for adoption today. These requests, to the extent they can be honoured, require considerable counselling of the applicant.

Despite increasing demand, resources for post-adoption services appear very limited. The present Voluntary Disclosure Register is primarily staffed by clerical personnel and has insufficient professional counselling capability, apart from supervisory staff, to meet even current demands. Some societies designate staff members to carry the major or full-time responsibility for their post-adoption counselling. Many, however, have curtailed their post-adoption staff and rotate responsibility among adoption or other workers, who may or may not have appropriate training in post-adoption counselling. Counselling in private licensed adoption agencies varies. Some have highly skilled staff who manage and counsel in adoptions. Other are not as well served.

Recommended counselling requirements

Some elaboration is needed of the suggested initial counselling interview of an adult adoptee who requests a birth certificate directly from the Registrar General and is informed that he has been adopted. **If the adoptee has applied in person, I recommend that this brief interview take place in the Registrar General's office through the assignment of staff who have been trained to impart such information, deal with initial reactions of the adoptee, and refer the adoptee to the Adoption Disclosure Register if requested. (R.6.1)** Because there should be a relatively small number of requests that come in person to the Registrar General's office, the assigned staff need not be fully occupied with this task. In Scotland at Register House in Edinburgh, one senior staff has counselling as part of her duties. (122) Similarly in England, with ten times the population of Scotland, the Registrar includes counselling among his other duties and is assisted by a part-time counsellor who is a professional social worker. (113) **If the adoptee has sent a written request to the Register General for his or her birth certificate, I recommend that a letter be sent to the adoptee (along with the requested birth certificate in the adopted name) informing him/her that another birth ceritificate exists and referring the adoptee to the Adoption Disclosure Register for more information and assistance. (R 6.2)**

In considering the implications of my recommendations regarding disclosure counselling, responsible administrators and regulators may be tempted, for economic and efficiency purposes, to control the amount and content of the counselling to be provided by the Adoption Disclosure Register and the societies. They should be informed of the experiences in England and Canada where counselling has been offered or required. In England in 1975 there was no attempt to limit the number of interviews to an adoptee who requested the original birth certificate and other identifying information. The number reported ranged from one to four interviews in Register House or at the Local Authority. There were more interviews on the average in voluntary agencies' adoption services in both England and Scotland. Haimes and Timms' study of the governmental counselling process and its usefulness concluded that it was viewed by adoptees as valuable, sensitive and purposeful.(27) Day and Leeding, in studies conducted within the first two years of the changed legislation, arrived at similar conclusions.(11) The researchers' questions regarding discretionary authority of a counsellor found replies that emphasized the necessity of allowing flexibility in time, number, and content of interviews. Family Care in Scotland and Dr. Barnardo's Adoption Service in both England and Scotland reported similar findings. (118)(125)

The wide range in the readiness of those receiving information argues for discretion by the counsellor in interpreting the facts contained in both identifying and non-identifying information. There are similar variations in the accessibility of any of the principals if a reunion or contact is to be sought. The requirement that reasonable and discreet inquiries be made to ascertain the willingness or refusal to establish contact or reunion carries with it the judgement to be made by counsellors on the appropriate use of time and content.

I have been impressed, in interviews held with social workers in both the United Kingdom and Canada, with the wide range of explanations of how they arrived at a conclusion with their interviewee; and the very narrow span in the description of outcome. The conclusions reached by their clients were that information was provided and understood, that reunions were decided upon or rejected, that contacts for reunions were made, and that evaluations were given that expressed satisfaction with the counselling they received.

Ontario does not yet have the same disclosure experience as England, but it does have a Voluntary Disclosure Register as well as several Parent Finders services in the voluntary sector. Parent Finders is a self-help organization which assists adoptees in their search, although they do not have access to identifying information except through the Register. Because the Voluntary Disclosure Register has been passive (this is, it does not actively assist in finding the birth parent or adoptee whose identity is sought), search activity in Ontario is left largely to these non-professional, voluntary groups. It should be noted, however, that there is considerable variation in skill and approach from one Parent Finder group to another across the province. In a 1985 Ottawa study, Parent Finders indicated an average of 15 to 20 hours were spent by Parent Finder counsellors in assisting adoptees in their search. Anticipated changes in the disclosure of identifying information were expected to reduce that time by half.

Saskatchewan initiated an adoption register practice in 1982 which is active on behalf of adult adoptees. They report that 15 hours of staff time is a reasonable allocation for counselling and assistance with the average search, with some searches requiring considerably more effort. The written procedures of the Saskatchewan Registry give some idea of what is involved in responding to an adult adoptee's request for identifying information and possible search. After a written consent to reunion services is obtained, a staff of the Register meets with the adoptee to discuss his/her motive for searching, attitude toward adoption and adoptive parents, awareness of adoptive parents of adoptee's request, expectation of adoptee toward reunion and relationship with natural family, and possible effects of reunion on the adoptive relationship. Next the counsellor clarifies the policy and procedure and discusses the possible outcomes of a search. For example, it may be impossible to locate the birth parents; even if reached, the parent may decline contact; the situation of the parent may be undesirable and the adoptee may wish to reconsider his/her request. If the adoptee still wishes to pursue contact, non-identifying information which could be shared with the birth parents is obtained.

Only then does the actual search activity begin. The file is reviewed for relevant information about the natural family of the adoptee, and a search is undertaken by the Register staff using available records, telephone directories, etc. If possible, direct contact with the natural mother is made by telephone and the purpose of contact and the Register's policies are discreetly explained. Care is taken to establish the correct identity of the mother and not to disclose the purpose of the call to other family members who may not be aware of the adoptee's birth. The counsellor also ensures that the mother understands that she is under no obligation or pressure to consider a reunion, and explores the implications of a reunion. If the mother is prepared to consider a reunion, a release form is obtained from her, as well as non-identifying information which could be shared. Often letters and pictures (without full names or addresses) are exchanged through the Register as a prelude to further contact or as the end of the process.

Finally, information about contact with the mother is explained to the adoptee and the latter is encouraged to discuss the matter with his/her adoptive family or spouse. Only then, if reunion is still favoured by the adoptee are reunion arrangements made. Letters and telephone calls are considered helpful preparation for face-to-face contact. Experience indicates that it may be several weeks or months before both parties feel comfortable about a personal meeting. Some follow up and review may also be provided by the Register (72).

In order to ensure that appropriate post-adoption counselling services are available to meet the requirements of my previous recommendations, I **recommend that post-adoption services be mandated in the Child and Family Services Act for both societies and the Adoption Disclosure Register. (R 6.3) I also recommend that appropriate resources be provided to the Adoption Disclosure Register and to children's aid societies, including appropriate training of personnel, to enable them to carry out the recommendations regarding pre-adoption and post-adoption counselling requirements. (R 6.4)** Such post-adoption services should include the offer of counselling to adoptive parents or others who may be affected by a disclosure or a search, even though their consent for disclosure is not required.

Agency and Register staff should be prepared through education and training to undertake the counselling tasks outlined. The agencies who assign their staff to adoption counselling should exercise the same caution they now employ in offering protection services to children. An elaborate training program has been provided for those who work with abused children and the perpetrators of abuse. The Ministry of Community and Social Services unofficially calls this training program "Garber Training", named after the Chairman of the Task Force on Child Abuse (1978). Training that was considered useful and vital for child welfare workers in the counselling for protection cases is equally needed for counsellors of those who seek and receive adoption information. The Minister would undoubtedly wish to find another name for the adoption training program if he were to accept my recommendation!

The role of the Adoption Disclosure Register

An expanded and more visible role for the Adoption Disclosure Register is central to the implementation of my recommendations. The Register must fulfill four important functions as outlined below, assuming the previous recommendations are accepted.

1. **Public information:** The Register must inform the public, through the media and other means, of its functions and of the rights of all parties to adoption with respect to the disclosure of non-identifying and identifying information and possible contact and reunion. This should include information about access to original birth certificates.

2. **Mechanism for disclosure of identifying information:** The Register will provide the mechanism for the release of all identifying information to any of the parties to adoption. I have suggested, however, that the Register will require the assistance of local children's aid societies and other approved agencies outside of Ontario in order to provide the required disclosure counselling.

3. **Active search and intermediary services:** The Register will assist eligible registrants who wish to undertake a search or possible reunion. Again, the assistance of local societies or other approved agencies will be required. I would note here that the experience and guidelines of Saskatchewan's Register could provide a valuable model for Ontario to ensure that such search and intermediary procedures are discreet and sensitive to all parties.

4. **Storage and updating of information:** In the future the Register, together with societies, would become the key repositories of identifying and non-identifying information, including updated information on the participants to adoptions.

I recommend, therefore, that the mandate of the Adoption Disclosure Register be expanded to include public education and information, active search and intermediary services, and the storage of complete and updated information related to an adoption (to the extent that is available), and that the necessary resources to fulfill this expanded mandate be provided. (R 6.5)

Projected volume of those seeking identifying information

It is impossible, of course, to accurately forecast the numbers of adoptees and others who will request identifying information if it is more easily accessible. I can, however, make an educated guess based on the experience of other jurisdictions as well as that of the Voluntary Disclosure Register.

It is estimated that in England from 1976 to 1983, between 2% and 3% of adoptees who previously had no access to birth information actually requested their birth records and other identifying information (excludes those adopted as older children or by step-parents or relatives). In Scotland, which has had accessible adoption records since 1930, it is estimated that less than 5% of eligible adoptees apply for their birth records. From June 1979 to September 1985, the Voluntary Disclosure Register in Ontario has received registrations from 5,351 adult adoptees and 2,635 birth parents, with only 342 matches. The number of registered adoptees represents about 6% of all adult adoptees in Ontario, exclusive of those adopted by step-parents or relatives who presumably have reasonable access to information through their families.

Future demand for identifying information will be affected by a number of factors. Undoubtedly the spill-over effects of increased demand for both identifying and non-identifying information brought about by the passage of Bill 77 will continue in the immediate future. Moreover, those who were adopted in the peak years from 1967 to 1971 will be reaching adulthood over the next five years. When the public became informed of the right to obtain birth information and of the expanded services of the Adoption Disclosure Register, many adoptees and birth relatives may come forward. In particular, Native adoptees seeking reinstatement in their Indian bands will need the assistance of the Register to provide evidence of their origins.

A two-thirds increase, or a total of 10% of all eligible adoptees, would be reflected in 2,800 additional requests for identifying information in 1986-1991. This compares with a request rate of 6% in the previous six year period. The opportunity extended to other birth relatives might result in another 1,000 requests for identifying information. The distribution of responsibility in responding to requests for information among the fifty or more societies and the Register, over a number of years, makes the achievement of the task possible. Because of the recommendations for mandatory counselling and post-adoption services, and because of the additional service demands, more staff resources will be required.

The number of requests for information could be expected to drop in the 1990's because of the sharp decline in the total number of adoptions since 1973. The decline has been accompanied by a significant rise in step-parent and relative adoptions, as well as an appreciable increase in the number of older children and special needs children who have been adopted. Most, if not all, of these adoptees would have had access to their origins.

Chapter 7

SPECIAL CONSIDERATIONS RE: INDIAN AND NATIVE ADOPTIONS

Native peoples in Ontario require special consideration in adoption policy. For purposes of this report, Native people can be divided into two groups. The first is comprised of status Indians who are members of Indian bands. The second group includes all other Native people; i.e., Indians who are not band members, non-status Indians, Metis, and a small number of Inuit. Note that this is a much broader definition than that used in Bill 77 where a "Native person" is a member of a "Native community" which has been designated as such by the Minister under Part X of the Act.

Native children have been placed for adoption at grossly disproportionate rates compared with their numbers in the total population of the province. (14). The adoption data reported for 1983 suggest that over 37% of those adopted in Ontario that year were Native children. This compares with less than 2% of Native people in the general population of Ontario. (15) There is no doubt Native children are being placed for adoption at a significantly greater rate than non-Native children.

Furthermore, in 1983, the most recent year for which Ministry Native adoption data are available, only 32% of the Native children adopted were placed with Native families. In one year, therefore, the Native groups lost approximately two-thirds of their children placed for adoption. When current losses of this magnitude are coupled with the fact that from 1969 to 1979 an average of 78% of status Indian children placed for adoption were adopted by non-Native families, the future of Indian and Native communities in Ontario may be at severe risk. (30)

One of the solutions included in the Child and Family Services Act to stem the loss to Indian bands and Native communities is that when an Indian child is to be placed for adoption by a society, the child's band is to be notified 30 days in advance of the adoption placement. The policy intent is to provide the band with an opportunity to consider making alternate plans for the child. There is also provision for notification to a Native child's community but only where the community has been designated as a "Native community" by the Minister under Section 192 of Part X of the Act. It is not known at this time what precise criteria will be used for such a designation. (26) In addition to the small settlements in Northern Ontario which could become designated Native communities, I would suggest that urban-dwelling Native people should be able to constitute their own "Native communities" in a way best suited to their needs.

On the one hand, it is appreciated that Indian bands have a long history of self-government. They have established processes for choosing leaders and maintaining communal responsibility. Consequently referral to a band, or to a child and family service agency designated for that purpose by the band, offers hope and some assurance that alternative plans for the child could be considered. Non-band Indians and Native people, on the other hand, have not had the same history or record in Ontario of establishing self-governing institutions. Many have moved to urban areas and have no identifiable

Native community structure. There is an urgent need, therefore, for the Province to also respond in special ways to the loss of children experienced by these groups. Two proposals suggest themselves and are offered as recommendations.

First I **recommend that the Province should assist, after due consultation, in establishing Native child and family service agencies in urban areas. (R 7.1)** These agencies would receive notification 30 days in advance when a local Native child is being considered for adoption placement. These new agencies should be provided with sufficient resources to consider and develop alternate plans for the children referred to them.

Secondly I **recommend that the Province should, at the same time, assist Native people to create community centres or organizations in urban areas that could represent the interests of Native people, including those related to social service and adoption in particular. (R 7.2)** Native friendship centres could be used as the base for the new community organizations.

In developing these centres or organizations, urban Native people will be able to benefit from the experience of province-wide groups that are now concerned with their interests. The presence in a number of cities of Native centres or Native community organizations would make continued identification as a Native person easier. Membership could result in treatment under the Child and Family Services Act analogous to band membership for status Indians. A Native community organization would have its own means of choosing leaders, developing services for its community members, and serving as a resource for a Native child and family service agency. Native people would not be required to belong to such an organization, but would be provided a choice to do so where few opportunities now exist.

Notice to bands/Native communities

Section 134 (3) of the Child and Family Services Act requires only a children's aid society to notify bands and designated Native communities of the intent to place an Indian or Native child for adoption. Since Indian and Native children are also placed for adoption by licensees, I **recommend that the requirement in Section 134(3) of the Child and Family Services Act to give notice to an Indian or Native child's band or Native community be extended to licensees as well as to societies. (R 7.3)** This is consistent with the Ministry's interim policy position. (26)

The legislative provision in Bill 77 requires notification to a band or designated Native community, without reference to the participation or consent of the birth parents. In the case of a Crown ward who is to be placed for adoption by a society, it is consistent with the rest of the Act not to require parental consent for notification. However, where the child has been relinquished for adoption by the birth parent(s), either to a society or to a licensee, failure to require birth parent consent seems to be inconsistent with the rest of the adoption provisions of the Act. The Government's rationale for this apparent inconsistency is not clear. Perhaps it was the primacy of the band in the life of Indian people and the felt need to redress past wrongs.

I believe, however, that the needs and rights of bands in respect of their members has to be balanced against the needs and rights of their members as individuals, independent of their association with the band. In making this assertion, I give full recognition and appreciation to the facts of Indian experience in Canada. Their treatment at the hands of newcomers; the harmful, unfortunate, and prejudicial treatment they have received from those in authority; discriminatory practices inflicted on them as recently as the 1950's when they needed a pass to leave the Reserve and did not have the right to vote; violations of treaties concerning their land; and the serious health and social hazards to which they have been exposed and become victims; these are all part of the historical litany of troubles that surround Indian and Native people. The painful past and their present achievements must be considered in implementing plans for survival and growth of Indian bands. At the same time the rights and privileges of the band must also be considered in the larger Canadian context of the rights, privileges and responsibilities of individuals. The passage of the Canadian Constitution in 1982 and the proclamation of the Charter of Rights in April of 1985 safeguard the right of individuals not to be discriminated against because of sex, race or ethnic origin. (44)(56)

As individuals, birth parents (or more typically birth mothers) have recourse to the Charter to affirm their rights. On the one hand an Indian birth mother might indeed be as concerned as her band that the band is in danger of losing its future if her child were to be adopted outside of the band. She would therefore readily consent to have the band notified of her plan to relinquish the child for adoption. On the other hand she may have left the band to live elsewhere and prefer, for her own reasons, that the child not be cared for by the band. Either wish should be respected. **I recommend therefore that except where the child is a Crown ward, birth parent's consent be required for notification to an Indian band or Native community under Section 134(3) of the Act. (R 7.4)** Since a majority of Indian children placed for adoption are in fact Crown wards, the requirement for birth parent consent should have minimal effect on Indian bands.

The effect of the requirement for consent of the birth parents is that it treats parents equally, regardless of group affiliation, and does not distinguish between Native, Indian or any other birth parents in the province. At the same time, the concerns of Indian bands and Native communities continue to be recognized in a special way by having proposed adoptions referred to them in advance.

While Section 134 (3) directs that notice of intent to place an Indian or Native child for adoption shall be given to the child's band or Native community, it does not specify what information shall be disclosed about the child. Normally when a child is to be placed for adoption only non-identifying information is given to prospective adoptive parents. The actual identity of the child is not disclosed in the interest of protecting the birth parents who have relinquished the child.

Because Indian bands and Native communities have relatively small populations, even non-identifying information given to them would readily become identifying. It is noted that 72 out of the 126 bands in Ontario have populations of under 500 people. If the 13 bands of the Six Nations are included, there are 85 bands that number under 500 in their membership. (15) The Native communities already established and located in the North are known to be smaller still. All members of such an Indian or Native community, present or absent, would be readily known to that particular community.

In order to maintain consistency in the Act's disclosure provisions to adoptive parents, I recommend that bands or Native communities be treated as equivalent to adoptive parents. To maintain and safeguard the identification of the birth parents, **I recommend that the notice of intent to place an Indian or Native child for adoption which is sent to a band or a Native community provide information only on the age, sex and physical or medical condition of the child. (R 7.5)**

Obviously, more detailed non-identifying information will be required if the band or Native community wishes to intervene to provide alternatives to adoption or to have the child placed for adoption within the band or Native community. **I, therefore, recommend that if the Indian band or Native community indicates through its designated child and family service agency that it wishes to make alternative plans for the child then additional non-identifying information should be transferred to the approved agency referred to in Part X, Section 194 (2). Where such an approved agency does not exist, a children's aid society or approved agency serving the jurisdiction of the band could be designated to represent them for this purpose. (R 7.6)**

Data collection

The justifiable claims made by Indian and Native communities that the number of children adopted outside of their communities represents a threat to their survival rest on data that have been collected only recently and in incomplete form. The Ministry of Community & Social Services at the provincial level and Indian and Northern Affairs Canada at the federal level have statistical information on Indian and Native adoptions which is decidely limited. Data on step-parent or relative adoption is not kept by the federal government, and reporting to MCSS is incomplete. There is a need to have such information readily available in order to know whether Indian and Native children have been adopted by step-parents or other relatives. **I recommend that the Ministry of Community & Social Services and Indian and Northern Affairs Canada keep standardized records of step-parent and relative adoptions and differentiate these between Indian and Native adoptions. (R 7.7)**

Extension of notification to others

The foregoing recommendations are intended to apply to Part VII and Part X of Bill 77 as these are concerned with Indian and Native communities.(26) They do not refer to or pertain to other cultural, religious, or ethnic communities in Ontario. However, the Province's extension of special status to Indian bands and potentially to Native communities signals an opportunity for other groups to seek similar benefits.

The Province of Ontario through its legislation has recognized Catholic and Jewish family service agencies as children's aid societies and now proposes in Part X of Bill 77 to recognize Indian and Native child and family agencies as potentially serving communities in ways similar to children's aid societies. Section 15 (2) of Part I of the Act may be interpreted to permit any religious or ethnic entity that wishes to constitute itself as a community and create its own children's aid society to do so .

No cultural, ethnic or religious community receives non-identifying or identifying adoption information as a "community." Only their designated child and family agency or society is eligible to receive and secure such information. Part X of the Act recognizes the potential and the need for Indian bands and Native communities to have a similar resource to meet their children's service needs. When such agencies are established, they will be eligible to receive adoption information. They will also be expected to counsel adoptees, adoptive parents, and birth parents through the phases of adoption.

There is a need for quick resolution of the problem of access to birth information for Indian and Native adoptees, because of the change in status of Indian women who married non-Indians. The children of Indian women who may have their status restored by their bands, will also be eligible for band membership provided they can identify their birth mother. Reinstatement may be affected by evidence contained in original birth certificates and adoption orders. It is very likely bands will not accept less, nor would Indian status be granted without strong evidence. Adoptive parents whose child is Indian or Native, whether a minor or an adult adoptee, should assist and encourage their adoptee to apply for original birth identification. Societies may wish to review their files to facilitate this process.

Compensatory action by the Province to redress past wrongs to Indian and Native people is admirable. If special status is to be conferred, however, based on time of arrival, then a "first come first served" policy will have come into effect and negate the provisions of the Charter which ensure equality before and under the law. Creating second or late-arrival class distinctions by only offering such compensation to first arrival groups will very likely lead to subsequent compensatory demands on future governments by other groups.

If or when special status is conferred on Indian or Native people in new sections of the Canadian Constitution, the question about first arrivals may be resolved. The question that will remain open, however, if there are new extraordinary provisions conferring collective rights, will be the supremacy of individual over collective rights. My contention in respect of Indian rights, adoptive or birth parents' collective rights, or any religious or other group's rights is that the individual's rights are paramount. The state may, and indeed does, exclude itself from special group considerations or benefits because it is sovereign. The delegation of that sovereignty to other than subordinate legislatures or the courts would in effect lease out or "privatize" the rights of individual Canadians. Given the authority of the Charter and the Constitution, such delegated actions would draw serious challenges. Even if Indian and Native peoples had a self-governing area where they had the equivalent of provincial jurisdiction, the new "provinces" would not be immune or independent of the Constitution of Canada.

Chapter 8

REQUIRED CHANGES TO BILL 77

Public outcry over the restrictive disclosure provisions of Bill 77 led to my appointment as a Special Commissioner to review the whole matter of adoption disclosure. I want to be very explicit, therefore, about the kinds of changes to the Child and Family Services Act that are required if the legislation is to reflect the intent of my recommendations. While I have been advised to leave the actual drafting of the legislation to the lawyers and those who are expert in such matters, I hope that the following will serve as a guide to the legislative drafters if my recommendations are accepted by the Government of Ontario.

The fundamental changes are to Sections 157 and 158 of the Act, but some amendment to Section 134(3) and 156 will also be necessary. As well it is recognized that much of the detail of my recommendations can be accomplished through revisions to the C.F.S.A. Regulations and Ministry guidelines.

Areas for revision to the Act include:

1. **Language**

   o to refer to the general category of persons adopted in Ontario as "adoptees" or "adopted persons," and where the reference is to an adult or child who has been adopted to use "adult adoptee" or "adopted adult" and "adopted child" as appropriate.

2. **Disclosure of non-identifying information:**

   o to define non-identifying information as any information on the background, health, or circumstances of the birth parents or birth relatives and on the circumstances of the adoptive family and the health and development of the adoptee, provided such information does not disclose, and is not likely to disclose, the identity or location of the birth parents, birth relatives, adoptee, and adoptive parents;

   o to authorize societies, licensees, and a Director appointed by the Minister to release non-identifying information, prior to and after granting of an adoption order;

   o to allow non-identifying information to be released on request to:

     - adoptive parents,

     - adoptees at age 18, or at 16 if the adoptee has voluntarily withdrawn from the care, control, and support of the adoptive parents,

  - birth parents, adult birth siblings, and birth grandparents of an adoptee;

- to allow non-identifying information to be released to:
  - adoptees under age 18 with the consent of their adoptive parents (except for emancipated 16 and 17 year olds as above),
  - to the family physician and attending physicians of an adoptee with the consent of the adult adoptee or the consent of the adoptive parents where the adoptee, is under age 18 and in the care and control of the adoptive parents;
- to allow prescribed non-identifying information to be released to Indian bands and Native communities when notification is to be sent;
- to provide discretion to a Director to release non-indentifying information to a physician attending an adopted child where the health or safety of the adopted child is threatened and the consent of the adoptive parents is not available or has been withheld;
- to ensure the provision of interpretive counselling to accompany any disclosure of non-identifying information.

3. Disclosure of identifying information:

- to define identifying information as information that is contained in the adoption files of the Ministry, a society, or a licensee; in court records of adoption; and in the records of the Registrar General pertaining to an adopted person, and which reveals or is likely to reveal the identity or location of birth parents, birth siblings, or other birth relatives of an adoptee; and/or the names and locations of an adoptee or the adoptive parents of an adoptee.
- specifying three categories of identifying information which may be disclosed under prescribed circumstances:

  A. the adoption order and the short-form birth certificate in the birth surname of the adoptee,

  B. the long-form birth certificate which is a certified copy of the original statement of live birth of the adoptee,

  C. any other identifying information concerning birth parents, birth siblings, birth grandparents of an adoptee; adoptees; adoptive parents; and persons involved in the relinquishment or placement for adoption of the adoptee.
- to rename the Voluntary Disclosure Register as the Adoption Disclosure Register;

- to authorize the Adoption Disclosure Register to release identifying information, accompanied by mandatory interpretive counselling to:
  - adoptees who have attained the age of 18 years, on request;
  - birth parents, adult birth siblings, and birth grandparents of adoptees who have attained the age of 18 years, with the consent of the adoptee;
  - adoptive parents and adoptees under age 18 who have their adoptive parents' consent with the following conditions:
    - i) the adoption order and short-form birth certificate in the birth surname of the adopted child, on request
    - ii) all other identifying information with the consent of the person(s) identified.
- to give a society, licensee, and Director discretionary authority in designated circumstances (such as where the applicant for information presents a danger to himself or others) to withhold or delay the provision of identifying and non-identifying information, subject to appeal;
- to establish appeal mechanisms: first to a Director appointed by the Minister, and then if the applicant is not satisfied, to the Courts;
- to authorize the Adoption Disclosure Register:
  - to release identifying information as above,
  - to accept registration indicating consent to be contacted for possible reunion from adult adoptees; birth parents, birth siblings, and birth grandparents of an adult adoptee; and from adoptive parents and minor adoptees with their adoptive parents' consent;
  - to require registered consent for contact by the parties to a proposed reunion;
  - to undertake a reasonable and discreet search for an unregistered party who is eligible to register or whose consent is required for the release of identifying information;
  - to refer persons eligible to receive identifying information or who are requesting assistance with a search to a society or other approved agency for the purposes of releasing the information, providing mandatory counselling, and assisting with the search;
  - to publicize the mandate and services of the Register.

- to provide discretionary authority to a Director appointed by the Minister to release identifying information where a reasonable search of up to 9 months has been undertaken and the person(s) whose consent is required cannot be located;

- to mandate the provision of post-adoption services by societies and the Adoption Disclosure Register;

4. **Notification to Indian bands and Native communities:**

- to extend requirement for notification under Section 134(3) to a licensee who is placing an Indian or Native child for adoption;

- to require the consent of the birth parent(s) for notification to the Indian band or Native community except when the child to be placed is a Crown ward;

- to restrict the information in the notification which goes directly to the Indian band or Native community to the age, sex, and physical or medical condition of the child to be placed for adoption. All other information about the child is to go to an Indian or Native child and family service agency or a society or approved agency serving the jurisdiction of the band or Native community and designated by them for the purpose.

Appendix I

Terms of Reference for Commissioner to Review the Matter of Disclosure of Adoption Information

Purpose

To provide recommendations to the Minister of Community and Social Services regarding the disclosure of adoption information.

Background

Interest in the disclosure of adoption information has increased substantially over the past 10 years. As a result, law and policy on disclosure has been reformed in Ontario and other jurisdictions.

In 1978, Ontario established the Voluntary Disclosure Register so that adult adoptees and their birth parents could obtain identifying information about each other. Where both parties register and the adoptive parents agree, information is disclosed and a reunion can take place.

Historically, the Ministry of Community and Social Services and Children's Aid Societies have released non-identifying information under a section in the Child Welfare Act that deals with sealing and unsealing of court adoption records. The Ministry discontinued this practice after Judge Killeen determined in the case of Elizabeth Ferguson that it was illegal and that it was inconsistent with the Ministry policy that adoption information is confidential.

In drafting the Child and Family Services Act, the Ministry attempted to clarify the policy. The Act generally prohibits disclosure except through the Register or when information is necessary to protect any person's health.

Concerns have been raised about the requirements for disclosure through the Register and about access to non-identifying information. The positions on disclosure are polarized and it is, therefore, difficult to establish policies or to draft law that meets the needs of all affected individuals. The Ministry has found itself in a difficult position: on one hand, the rights of individuals to confidentiality must be respected; on the other, the rights and needs of individuals to have information about themselves must also be addressed. In addition, there are some people who feel very strongly that the integrity of the adoptive family should be protected from possible disruption. In short, there are no easy solutions that will accommodate the rights and interests of all adoptees, birth parents, adoptive parents and siblings or other biological relatives of adoptees.

The Ministry will ensure that there is a full, objective review of the matter in light of the recent court decision and of the views that have been expressed during the development of the Child and Family Services Act.

Methodology and Time Frame

The Commissioner will conduct a full review of matters related to adoption information disclosure and will provide a report to the Minister with findings and recommendations by mid-autumn, 1985.

The recommendations will be formulated by the commissioner on the basis of:

- a review of submissions that have been made to the Ministry and the Standing Committee on Social Development including correspondence from individuals which will remain confidential
- a review of the use of the Register since its establishment
- other research as deemed necessary by the commissioner for the development of his or her recommendations.

Mandate

The commissioner will undertake a review and make recommendations in 2 major areas as follows:

Access to Non-Identifying Information

This area deals with the disclosure of information that does not identify individuals involved in the adoption. Access to such information need not be through the Voluntary Disclosure Register.

1. Should there be greater access to non-identifying information than is possible under either the Child Welfare Act or the Child and Family Services Act?
2. What should be considered as non-identifying information? Are there categories of information that should be excluded or are there circumstances under which types of information might be considered as identifying?
3. If non-identifying information were to be made available, should there be criteria for disclosure? Should it be available upon request or should it be released only for health reasons, for example?

4. Who should have access to non-identifying information?

    - o adoptive parents
    - o birth parents
    - o minor adoptees with the consent of adoptive parents
    - o adult adoptees with or without the consent of adoptive parents
    - o adult siblings of adoptees

5. Who should have the authority to release non-identifying information?

    - o a Ministry Director
    - o a children's aid society that arranged the adoption
    - o a private licensee that arranged the adoption

6. Should there be grounds for refusal of access and, if so, what should these be? If access could be denied, should there be an appeal mechanism?

Access to Identifying Information

This area deals with disclosure of identifying information through the Voluntary Disclosure Register. As a general rule, information that identifies a person will be released through the Register with that person's consent.

Recommendations are sought on certain policies, practices and procedures.

1. Who should be eligible to have access to identifying information through the Register?

    - o birth parents
    - o adult adoptees
    - o adult siblings of adoptees
    - o adoptive parents

2. Should there be conditions or limitations on access rights for any of the above? For example, should the adoptive parents' consent be required in addition to the consents of an adoptee and birth parent?

3. What should be the mechanism for disclosure of information, either identifying or non-identifying, in serious medical situations? Who should have the authority to disclose and who should be given access?

The Commissioner will make recommendations to the Minister and in doing so will give consideration to:

- whether or not any of the recommendations should be implemented retroactively or should apply only to adoptions that take place after the recommendations might be implemented.
- the manner in which the recommendations should be implemented including possible requirements for counselling when information is disclosed.

Summary

The Commissioner will conduct a review of the matter of adoption information disclosure within the parameters set out above. He or she will make recommendations to the Minister regarding law, policies, practices and procedures by mid-autumn, 1985.

The Minister will determine which recommendations, if any, are to be implemented.

Appendix II

Table 1

COMPLETED ONTARIO ADOPTION ORDERS BY SPONSOR FOR SELECTED YEARS

Decade	Society	Private/licensee	Step-parent/ relative	Total
1921-60	N/A	N/A	N/A	74,500(est.)
1961-70	42,350(66.1%)	6,829(10.7%)	14,860(23.2%)	64,039
1971-80	23,920(45.7%)	5,037 (9.6%)	(est.) 23,403(44.7%)	52,360(est.)
1981-83	3,994(33.2%)	1,148 (9.5%)	(est.) 6,891(57.3%)	12,033(est.)
1984	N/A	N/A	N/A	3,260(est.)
				206,192(est.)

Source: Ministry of Community and Social Services

BIBLIOGRAPHY

1. Aitken, Gail: "Critical Compromises in Ontario's Child Welfare Policy." MSS. Prepared for presentation at Conference on Social Policy, Regina, Saskatchewan, 1985.

2. Access to Birth Records: General Registrar Office Study, Journal of the Association of the British Adopton Agency, 1978.

3. Anderson, Carol, Campbell, Lee, Cohen, Maryanne: "Eternal Punishment of Women: Adoption Abuse." Massachusetts, United Birth Parents Inc., 1981, 7 pp.

4. Aumend, Sue and Barrett, Marjie: "Self Concept and Attitudes Toward Adoption: A Comparison of Searching and Non-Searching Adult Adoptees." Child Welfare Vol. LXIII No. 3, May-June, 1984

5. Birenbaum, Shirley: "Should Adoptees have the Right to Information about their Birth Parents". York University paper prepared for Prof. R. Barnhorst, May 1984.

6. Cedarblad, Marianne: Children Adopted from Abroad and Coming to Sweden After Age 3. The Swedish National Board for Intercountry Adoptions, Stockholm, Sweden, 52 pp.

7. Children's Act 1975. Second Report to Parliament, November 1984. pp. 25-26: Birth Records Counselling.

8 Children's Aid Society of Metropolitan Toronto: "Post Adoption Services to Birth Parents," August 1983.

9. Commission on Freedom of Information and Individual Privacy: Public Government for Private People. Toronto, Government of Ontario, 1980, 3 Vols., Vol. 3: "Protection of Privacy."

10. Committee on Record Disclosure to Adoptees: A Report to the Hon. James A. Taylor, Minister of Community and Social Services, Toronto, June 1976.

11. Day, Cyril and Leeding, Alfred: "Access to Birth Records." B.A.A.F., London, 1980. Impact of Section 26 of Children's Act 1975.

12. Day, Cyril: Appendix to First Report to Parliament, 1978. Survey into the Working of Section 25 of the Children's Act, 1975 -- Counselling Interviews with the first 500 Applicants at General Register Office.

13. Department of Health and Social Security (U.K.) Adoption Agencies Regulations, 1983, p. 5, Reg. 6(3)

14. Department of Indian Affairs and Northern Development: "Ontario Indian Adoptions," March 1983.

15. Department of Indian Affairs and Northern Development: "Indian Population by age, sex and residence for Region 3", Ontario Region, December 31, 1983.

16. Deykin, Eva Y., Campbell, Lee, Patti, Patricia: "The Post Adoption Experience of Surrendering Parents," *Amer. Journal of Orthopsychiatry*, Vol. 54, No. 2, April 1984, pp. 271-280.

17. Dingwall, Robert, Eekelaar, John, and Murray, Topsy: *The Protection of Children*. State Intervention and Family Life, London, Blackwell 1983, Chapters 3, 10 and 11.

18. Donzelot, Jacques: *The Policing of Families*. N.Y. Pantheon 1979 (English Translation). Ch. 2 and Ch. 3.

19. Dukette, Rita: "Value Issues in Present Day Adoption." *Child Welfare*. Vol. LXIII No. 3, May-June 1984, pp. 233-243.

20. Ensminger, Raymond O.: "Adoption Reunions - An Emotional Triangle: Some Background," *Social Worker*, Vol. 52, No. 2, Summer 1984.

21. Feigelman, William and Silverman, Arnold R.: *Chosen Children: New Patterns of Adoptive Relationships*. New York, Praeger 1983, Ch. 8: "The Adoption Search Controversy."

22. Ferguson, Evelyn: "Private Adoption in Ontario." MSS prepared for presentation at Conference on Social Policy Regina, Saskatchewan, 1985.

23. Fuller, Lon L. *Legal Fictions*. Stanford, California, Stanford University Press, 1967.

24. Gardell, Ingegard: *A Swedish Study on Intercountry Adoptions*, Stockholm, Allmana Barnhuset 1979. Published in English by Swedish Council for Intercountry Adoptions, pp. 52-57: "Children's Rights to their Identity."

25. Government of Ontario, Ministry of Community and Social Services: "Adoption Statistics". 1984.

26. Government of Ontario, Ministry of Community and Social Services: "Tentative Policies for Indian Provisions of the Child and Family Services Act, Parts I to IX, June 1985.

27. Haimes, Erica and Timms, Noel: *Adoption, Identity, and Social Policy*: The Search for Distant Relatives. London , Bower 1985, Ch. 1, 7, 8.

28. Haimes, Erica: "Now I Know Who I Really Am:" Identity Change and Redefinitions of Self in Adoptions. Cardiff International Interdisciplinary Conference on Self and Identity, 1984.

29. Hardy, Leslie: Report on Legal Aspects of Adoption Disclosure, Research for the Special Commission on Adoption Disclosure, July 1985.

30. Hepworth, H. Phillip: Foster Care and Adoption in Canada, Ottawa, Canadian Council on Social Development, 1980.

31. Jerome, Lawrence, Cohen, Joyce, and Westhues, Anne: "A Preview of the Literature on the Prevention of Harmful Sequelae of Adoption," Journal of Preventive Psychiatry (Accepted for publication).

32. Johnson, Diane: "The Impact of Adoption on the Relinquishing Parent." University of Victoria, B.C. Prepared for Dr. Michael Hunter, June 1985.

33. Kirk, H. David and McDaniel, Susan A.: "Adoption Policy in Great Britain and North America," Reprint 1983.

34. Kirk, H. David: Adoptive Kinship: A Modern Institution in Need of Reform. Toronto, Butterworths, 1981, Ch. 8 and Ch. 10.

35. Kowel, Katherine, and Schilling, Karen Maitland: "Adoption through the Eyes of Adult Adoptees." American Journal of Orthopsychiatry 55 (3), July 1985, pp. 354-361.

36. Leaver, Beverly: Report on Submissions to the Standing Committee on Social Development, and to the Ministry of Community and Social Services' Consultation Paper on Bill 77, in reference to Adoption Disclosure.

37. Lettner, Margot: "Closing the Door on Disclosure: The Adoption Records Provision of the Child and Family Servies Act 1984." Reports of Family Law, Second Series, Vol. 44, Part 1, May 1985, pp. 28-36.

38. Lindsay, Meg and McGarry, Ray: Adoption Counselling: A Talking Point. Scottish Adoption Advice Service, Dr. Barnardo's Scottish Division, 1984.

39. Lyon, A. and Gillon, S.: "A Survey of 50 Adult Adoptees who used the Rights of the Israeli 'Open File Adoption Law'." Jerusalem Ministry of Social Welfare Adoption Services and Services to Unwed Mothers, July 1976, 14 pp.

40. McLaughlin, Paul: Guardianship of the Person. Toronto National Institute of Mental Retardation, 1979, Ch. IV.

41. McWhinnie, Alexina M.: "Genealogical Certainty - Adopted Adults Need for This." Paper presented to Third National Adoption Conference, Ottawa, May 1985.

42. McWhinnie, Alexina M.: Adopted Children: How They Grow Up. (A study of adjustment as adults), London, Routledge Kegan Paul, 1967.

43. McWhinnie, Alexina M.: "Who Am I? Adopted Children's Search for Identity". Child Adoption, 1970, Vol. 62, British Association of Adoption Agencies.

44. O'Donnell, Fergus Colin: "The Four-sided Triangle: A Comparative Study of the Confidentiality of Adoption Records," 1983, University of Western Ontario Law Review, 129.

45. Raynor, Lois: *The Adopted Child Comes of Age*, London, George Allen Unwin, 1980.

46. Raz, J.: "Legal Rights." *Oxford Journal of Legal Studies*. Vol. 4, No. 1, 1985.

47. *Report on the State Audit Project*: A preliminary analysis of selected federal and Ontario laws based on the sex equality provisions of the Canadian Charter of Rights and Freedoms. Charter of Rights Educational Fund, Toronto, January 1985, Ch. 4, Sect. III, Adoption and Sexual Discrimination, 4.87 to 4.96.

48. Rollins, Betsy and Bicknell, Mina: "A Presentation of Adoption Problems in Maine," Adoption Search Consultants of Maine, 1985. Compendium of Legislation, Declarations and Testimony of Support for Disclosure.

49. Sachdev, Paul: *Adoption* -- Current Issues and Trends, Toronto, Butterworths, 1984.

50. Saskatchewan Social Services: "Information Paper: Post-Adoption Services to Birthparents," August 1983.

51. Second Report to Parliament, Children's Act 1975, London, Her Majesty's Stationery Office, November 1984, Ch. 2, pp. 25, 26.

52. Sobel, Michael and Cardiff, Jeannette: "A Sociopsychological Investigation of Adult Adoptees Search for Birthparents." *Family Relations*, October 1983, pp. 477-483.

53. Sorosky, Arthur, Baran, Annette, and Pannor, Reuban: *The Adoption Triangle*. New York, Anchor Press, 1978.

54. Sorosky, Arthur, Baran, Annette, and Pannor, Reuban: "The Effect of the Sealed Record in Adoption." *Am. Journal of Orthopsychiatry 33(8), August 1976, pp. 900-904*.

55. Sorosky, Arthur, Baran, Annette, and Pannor, Reuban: "Adoptive Parents and the Sealed Record Controversy." *Social Casework*, November 1974, pp. 531-536.

56. *Sources for the Interpretation of Equality Rights under the Charter:* A Background Paper. Ministry of the Attorney General of Ontario, Rev. Edition June 1985, Ch. 5. "The Treatment of the Enumerated Grounds" pp. 298-316. Ch. 6, "The Treatment of the Non-enumerated Grounds" pp. 317-349.

57. Stoneman, Lou, Thompson, Jan, and Webber, Joan: "Adoption Reunion: A Study of the Effect of Reunion upon Members of the Adoption Triad and their Families." Children's Aid Society of Metropolitan Toronto, 1980, 31 pp.

58. Stoneman, Lou, Blakely, Cindy, Douglas, Audrey, and Webber, Joan: "Post Adoption Service to Birthparents - A Survey of Birthparents Enquiring about a Child Relinquished for Adoption Some Years Previously." Children's Aid Society, Metropolitan Toronto, April 1985. 46 pp.

59. Tartanella, Paul J. and Rutgers, L. Rev.: "Sealed Adoption Records and the Constitutional Right of Privacy of the Natural Parent." Adoption-Law and Legislation: Parent and Child, Spring 1982.

60. Tay, Stephanie and Shephard, Gloria: "A Birthmother Looks at Adoption," Family Involvement, Vol. 10, No.5, pp. 12-27.

61. Tizzard, Barbara: Adoption: A Second Chance, London, Open Books, 1981, ch. 18.

62. Triseliotis, John: "Obtaining Birth Certificates." Adoption, Philip Bean, (Ed.) London, Tavistock, 1985, pp. 38.

63. Triseliotis, John: "Adoptees in Search of their Origins," Association of British Adoption Agencies, 1972.

64. Triseliotis, John: In Search of Origins London, Routledge Kegan Paul, 1973.

65. Triseliotis, John: "Identity and Security in Adoption and Long Term Fostering": Journal of Br. Assoc. of Adopt. and Foster, 1982

66. Triseliotis, John: "Counselling Adoptees." In New Developments in Foster Care and Adoption ed. J. Triseliotis, London, RKP, 1980, pp. 229-237.

67. Wagner, Gillian: Barnardo, London, Weldenfeil and Nicholson, 1979, Ch. 13, 14.

68. Warnock, Mary: A Question of Life, London, Basil Blackwell, 1984, Ch. 1: "Expressions of Dissent," pp. 87-94.

69. Warrington, J.D.: "The Courts Contend with Sealed Adoption Records" in Adoption and Adoption Services, Public Welfare, 1980.

70. Winkler, Robin and Van Keppel, Margaret: Relinquishing Mothers in Adoption: Their Long Term Adjustment, Melbourne, Institute of Family Studies Monograph #3, May 1984, Ch. 4.

71. Unruh, Marlee C. "Adoptees, Equal Protection Rights," U.C.L.A. Law Review 1981, Vol. 28: pp. 1314 - 1364.

72. Ontario Law Reform Commission: Report on Human Artificial Reproduction and Related Matters, Vol. I and II. Government of Ontario, Ministry of the Attorney General, 1985.

73. Government of Saskatchewan, Department of Social Services: "Schedule: Post Adoption and Post Care Intermediary Services," 1982.

INTERVIEWS, MAY - OCTOBER 1985

ONTARIO

In person or extended telephone interviews:

100. Children's aid society staff (6 agencies)
101. Children's aid society Executive Directors (5 agencies)
102. Licensed adoption agency (2)
103. Voluntary adoption registry staff
104. Parent Finder group representatives (4)
105. Birth parents who have located their children and others who have not (6)
106. Adoptees who have established reunion or who are seeking origins (5)
107. Adoptive parents (24)
108. Scholars and researchers in field of adoption and child welfare (5): Cohen, Kirk, Webber, Marcus, Hepworth

CANADA

109. Meeting with adoption coordinators from all the provinces
110. International Social Service
111. Alexina McWhinnie, U.K. researcher on adoptees whose work was cited by Houghton Committee

ENGLAND

113. Registrar - General Registrar office: Ken Stalker
114. Westminister (London) local authority adoption unit staff
115. Chief social work consultant, Dept. of Health and Social Services - David Stapelton
116. Jane Rowe, former director British Assoc. of Adoption and Fostering and member of Houghton Committee (1972)
117. Anthony Hall, Director of British Agencies for Adoption and Fostering
118. Barnardo's staff in adoption unit - a voluntary child welfare organization
119. 6 Executive Board members of N.O.R.C.A.P. (National Organization for Counselling Adoptees and their Parents)
120. Robert Dingwall and John Eekelaar, legal scholars on family and children, Oxford University
121. Erica Haimes, sociologist, researcher on England's disclosure laws.

SCOTLAND

122. Registrar General, register office: Ian Dewar
123. Scottish office: David Kerr
124. East Lothian adoption unit staff - local authority
125. Family Law Adoption Unit, East Lothian, Voluntary Welfare Agency
126. Strathclyde, Glasgow Division, Training officer: W. Clark
127. Dr. Frederick Stone: Professor of Child Psychiatry, Glasgow Unit and consultant to Houghton Committee
128. Scottish Adoption Advice Service, Barnado's Scottish Division

129. Dr. John Triseliotis, scholar on adoptees' search for origins whose work was influencial in Houghton Committee's recommendations on disclosure, Edinburgh

130. Dr. Stuart Asquith, scholar in philosophical issues in social welfare, Edinburgh